

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

<p>In the Matter of:</p> <p><b>WHOLE FOODS MARKET SERVICES, INC.,</b></p> <p style="text-align: center;">Respondent,</p> <p style="text-align: center;">and</p> <p><b>SAVANNAH KINSER, SUVERINO FRITH, LYLAH STYLES, ABDULAI BARRY, KIRBY BURT, KAYLEB CANDRILLI, LEEA KELLY, TRUMAN READ, HALEY EVANS, JUSTINE O'NEILL, JOLINA CHRISTIE, SARITA WILSON, CAMILLE TUCKER-TOLBERT, CASSIDY VISCO, YURI LONDON, ANA BELEN DEL RIO-RAMIREZ, CHRISTOPHER MICHNO, As Individuals,</b></p> <p style="text-align: center;">Charging Parties.</p>		<p><b>Case Nos.:</b> 01-CA-263079 01-CA-266440 01-CA-263108 01-CA-264917 01-CA-265183 01-CA-273840 04-CA-262738 04-CA-263142 04-CA-264240 04-CA-264841 05-CA-264906 05-CA-266403 10-CA-264875 19-CA-263263 20-CA-264834 25-CA-264904 32-CA-263226 32-CA-266442</p>
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The above-entitled matter came on for hearing pursuant to notice, before **ARIEL SOTOLONGO**, Administrative Law Judge, at the **National Labor Relations Board, 1015 Half Street SE, Washington, D.C., on Wednesday, July 20, 2022, at 9:30 a.m.**

**A P P E A R A N C E S**

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3	<b><u>WITNESSES</u></b>	<b><u>DIRECT</u></b>	<b><u>CROSS</u></b>	<b><u>REDIRECT</u></b>	<b><u>RECROSS</u></b>	<b><u>DIRE</u></b>
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5	Chad Woodmancy	2385	2408	2417	2418	--
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7	Nicholas Stegeman	2431	2457	2466	2467	--
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2	<u>EXHIBITS</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
3	GENERAL COUNSEL'S		
4	GC-77	2463	2465
5			
6	RESPONDENT'S		
7	R-74	2439	2444
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P R O C E E D I N G S

(Time Noted: 9:31 a.m.)

**JUDGE SOTOLONGO:** All right, let's go on the record.

Good morning. It's now Wednesday, July the 20th, and we're resuming the trial in the Whole Foods case. It is now Respondent's turn to present his case in this portion of the case, so Mr. Brown, are you ready to call your first witness?

**MR. BROWN:** We are, Your Honor. Whole Foods Market calls Chad Woodmancy.

**JUDGE SOTOLONGO:** Please take it off.

**MR. BROWN:** You can take your mask off.

**MR. WOODMANCY:** Yes.

**JUDGE SOTOLONGO:** Could you please raise your right hand?

(Whereupon,

**CHAD WOODMANCY**

was called as a witness by and on behalf of the Respondent and, after having been duly sworn, was examined and testified as follows:)

**JUDGE SOTOLONGO:** Thank you. Please, take a chair for you. Can you please spell your name for us and give us your address? Your business address will suffice.

**THE WITNESS:** My name is Chad Woodmancy, C-h-a-d, last name is spelled W-o-o-d-m-a-n-c-y. It's 10275 Little Patuxent Parkway in Columbia, Maryland.

1 JUDGE SOTOLONGO: Sir, can you spell your last name for  
2 me again?

3 THE WITNESS: Sure, it's W-o-o-d-m-a-n-c-y.

4 JUDGE SOTOLONGO: C-y. And that's pronounced --

5 THE WITNESS: Woodmancy.

6 JUDGE SOTOLONGO: All right, thank you very much.

7 THE WITNESS: Thank you.

8 JUDGE SOTOLONGO: Please proceed.

9 MR. BROWN: Thank you.

10 **DIRECT EXAMINATION**

11 Q. BY MR. BROWN: Mr. Woodmancy, is it all right if I call  
12 you Chad?

13 A. Sure.

14 Q. I think that might be easier. Who is your employer?

15 A. Whole Foods Market.

16 Q. Okay. And how long have you worked for Whole Foods  
17 Market?

18 A. Twenty-four years.

19 Q. And just briefly, if you could, review for us the  
20 positions that you've held with the Company and where.

21 A. I started in --

22 Q. And I'm going to ask you to keep your voice up so the  
23 Judge can hear you.

24 JUDGE SOTOLONGO: Yeah, that's --

25 THE WITNESS: That's not a microphone. That doesn't

1 work, okay.

2 JUDGE SOTOLONGO: These microphones do not amplify your  
3 voice, it simply records it, and this is a big room, so --

4 THE WITNESS: Got it.

5 JUDGE SOTOLONGO: Okay.

6 THE WITNESS: Got it. So I started in 1997 at the  
7 Annapolis Whole Foods Market as a team member in the bakery  
8 department. From there, I moved up the ranks in the bakery  
9 department to bakery team leader. In 2006 I started to get  
10 into store leadership at the Baltimore location, downtown  
11 Inner Harbor. From there I went into -- to P Street in D.C.  
12 as an assistant store team leader. I went back to Baltimore  
13 in Mount Washington as an assistant briefly, and I became the  
14 store team leader there and that was in 2014-ish. And then  
15 went to Old Town, Virginia, as a store team leader and then  
16 to Columbia where I am currently a store team leader.

17 Q. BY MR. BROWN: You are the store team leader at the  
18 Columbia, Maryland store; is that correct?

19 A. Correct.

20 Q. Okay. The Columbia store has the initials KMQ; is that  
21 correct?

22 A. That's correct.

23 Q. What does that stand for, for a foreigner here?

24 A. It's Kittamaquindi, which is the lake behind the store,  
25 Lake Kittamaquindi.

1 Q. Okay. And how long have you been the store team leader  
2 at the Columbia, Maryland store?

3 A. Coming up on 3 years there.

4 Q. And just again, briefly what are your responsibilities  
5 and duties as the store team leader at the Columbia, Maryland  
6 store?

7 A. I'm responsible to oversee all aspects of operating the  
8 store, from team member safety, customer service, P&L,  
9 repairs and maintenance. Pretty much anything that involves  
10 the operation of the store, I'm responsible for.

11 Q. I want to focus your attention on the summer of 2020 and  
12 ask you about the store leadership structure in the Columbia,  
13 Maryland store. Who were your associate store team leaders?

14 A. One was Melisa Niane. And my other was Deng Manasseh.

15 Q. Okay. Those would be, let's say in a different kind of  
16 store, those would be the assistant store managers?

17 A. Correct.

18 Q. Okay. And you know Jolina Christie?

19 A. I do.

20 Q. Okay. What team or department did she work in?

21 A. She was a cashier for our frontend team.

22 Q. Okay. And in the summer of 2020, who was the team  
23 leader responsible for the front end and the cashiers?

24 A. Reyna was her name.

25 Q. Okay.

1 JUDGE SOTOLONGO: And Reyna is spelled R-e-y-n-a?

2 THE WITNESS: Correct. Or is her name.

3 Q. BY MR. BROWN: Fair enough. Do you recall the death of  
4 George Floyd on May 25th of 2020?

5 A. Absolutely, yeah.

6 Q. And do you recall protests, Black Lives Matter protests,  
7 that sprung up in the immediate aftermath of his murder and  
8 throughout the summer?

9 A. I do.

10 Q. Okay. What do you recall about that, and how did you  
11 learn about it?

12 A. Well, obviously everyone saw the video, social media,  
13 the murder of George Floyd, and then a lot of emotions, a lot  
14 of people upset and wanted to make sure their voices were  
15 heard. They got out in the streets and protested the murder  
16 of a black man by the police.

17 Q. And now I'm talking sort of from May 25th, 2020, through  
18 the summer of 2020. Did you hear from team members, did you  
19 talk to team members about the murder of George Floyd and the  
20 Black Lives Matter protests?

21 A. We definitely talked about the murder. That was  
22 something that certainly was a hot topic. Team members were  
23 shocked at how blatant it was and fearful they were with  
24 police interactions and fearful for their children, you know,  
25 and then some folks talked about the rallies and some of the

1 things that had been happening, and we had some stores that  
2 were damaged during protests. Those kind of things were  
3 talked about as well.

4 Q. Okay. Chad, what did you understand the Black Lives  
5 Matter movement to be about?

6 A. Ending the killing of black and brown people by the  
7 police, specifically black people.

8 Q. The store that -- the Columbia store, can you describe  
9 what's adjacent to it? I think you said there's a lake and a  
10 park or --

11 A. Yeah.

12 Q. I'm asking you, I've never been there. What does it  
13 look like?

14 A. So our building is on the lake, and there is a lakefront  
15 area which is connected, basically connected to our building.  
16 There's a lot of events there, it's a town center, a lot  
17 of -- the Columbia association holds a lot of events there.  
18 Fourth of July, there's a big fireworks show. Our parking  
19 lot is used for some of those events at times, so we're very  
20 entrenched in that lakefront area.

21 Q. With regard to -- again, I'm focusing your attention on  
22 the summer of 2020, and on particular, June 5th of 2020, do  
23 you recall that there was a Black Lives Matter rally being  
24 held on the lakefront right next to your store?

25 A. Yes.

1 Q. What do you recall knowing about that or learning about  
2 that?

3 A. We were alerted by the landlord that there was a planned  
4 rally there. The local police came in that morning to let us  
5 know, and it was expected to be peaceful, but you know, our  
6 parking lot was connected and would probably get used because  
7 they were expecting a lot of folks to come. We had also had  
8 a lot of instances of damage at some other stores, so there  
9 was a safety concern as well in case something turns out, so  
10 we made the decision to close early for multiple reasons that  
11 day.

12 Q. You closed early that day for safety reasons?

13 A. Yes.

14 Q. Okay. Had the store, in your experience, in your years  
15 there, ever had to close because of safety concerns other  
16 than on this occasion?

17 A. No.

18 Q. And were you aware of team members participating in that  
19 Black Lives Matter rally or any others? And I'm talking  
20 about that time period, the --

21 A. Yeah.

22 Q. -- summer of 2020.

23 A. There was definitely --

24 MR. PETERSON: Objection. Objection, relevance.

25 JUDGE SOTOLONGO: Overruled.

1 THE WITNESS: There were definitely some team members  
2 that mentioned they were going to participate in some events.

3 Q. BY MR. BROWN: Did you support them?

4 A. Yes.

5 Q. Okay. Did you discipline any team members for  
6 participating or supporting Black Lives Matter?

7 A. No.

8 Q. Okay. Do you support Black Lives Matter?

9 A. Yes.

10 Q. Okay.

11 JUDGE SOTOLONGO: How long was the store closed for?

12 THE WITNESS: We closed in the evening, I think it  
13 was 7, so it was like 3 hours.

14 Q. BY MR. BROWN: And just to follow up on the Judge's  
15 question, was the Black Lives Matter rally peaceful?

16 A. It was.

17 Q. No damage to the store?

18 A. No.

19 Q. Okay. Let's talk about Jolina Christie. Did you ever  
20 see her wear a T-shirt that said "I can't breathe"?

21 A. Not while on the clock.

22 Q. Okay. Did you see her wear a T-shirt that said "Black  
23 Lives Matter" while on the clock?

24 A. No.

25 Q. Did you see her wear a T-shirt that said "Where's the



1 effect of," and I think it's "no lives matter until black  
2 lives matter"?

3 A. No.

4 Q. Okay. You were, I think, careful to say on the clock.  
5 Let me ask you this, did you see Ms. Christie wearing a  
6 T-shirt that said "Black Lives Matter" or "I can't breathe"  
7 or both off the clock?

8 A. Yes.

9 Q. Okay. Can you tell us about when you saw that and what,  
10 if any, interactions you had with Ms. Christie when she was  
11 wearing that T-shirt off the clock?

12 MR. PETERSON: Objection, relevance.

13 JUDGE SOTOLONGO: Overruled.

14 THE WITNESS: Her boyfriend worked for us in the bakery  
15 department, so from time to time she would come visit with  
16 him on his lunch break, things like that, or coming in to  
17 work at times she would wear the mask or something before she  
18 clocked in. We had multiple conversations over that time  
19 frame about her feelings, her interactions in the community,  
20 things that she wanted to do, things like that.

21 JUDGE SOTOLONGO: What's the name of this employee  
22 again?

23 THE WITNESS: Jolina.

24 MR. BROWN: This is Jolina Christie, the Charging Party.

25 JUDGE SOTOLONGO: Okay. That's what I thought.

1 Q. BY MR. BROWN: And just to get clarification, you're  
2 saying that you saw Ms. Christie come into the store, for  
3 example, to visit with her boyfriend while she was not  
4 working?

5 A. Correct.

6 Q. Okay. And she was wearing Black Lives Matter messaging  
7 on a T-shirt and on a face mask?

8 A. Yes.

9 Q. Okay. Did you tell her to remove it?

10 A. No.

11 Q. Why not?

12 A. She wasn't on the clock. The policy didn't affect her  
13 at that time.

14 Q. When was the -- well, did you see Jolina Christie wear a  
15 Black Lives Matter mask or those T-shirts that we just -- I  
16 just explained, I described to you, the first week of June of  
17 2020?

18 A. The first week, no.

19 Q. Had you seen, though, the T-shirts and the mask in the  
20 first week of June, do you think you would've remembered  
21 that?

22 A. Yes.

23 Q. And you don't remember that?

24 A. I don't.

25 Q. Do you recall seeing Jolina Christie wearing a Black

1 Lives Matter mask on June 12th of 2020?

2 A. Yes.

3 Q. Do you recall where or when you saw her wearing that  
4 mask?

5 A. It was definitely when I talked to her about it when I  
6 saw it in the break room/training room that we have.

7 Q. Okay. I'm having trouble hearing you.

8 A. Sorry.

9 Q. I apologize.

10 JUDGE SOTOLONGO: Yeah.

11 Q. BY MR. BROWN: Yeah. So I'm going to ask it again  
12 because I couldn't hear you. When and where in the store  
13 were you when you saw Ms. Christie wearing a Black Lives  
14 Matter mask?

15 A. She was training in our break/training room upstairs.

16 Q. Okay. And what do you remember, if anything, about this  
17 encounter and your communications with Ms. Christie?

18 A. I went to her and just said, you know, I'm sorry, but  
19 that particular mask does not -- the messaging doesn't fit  
20 our dress code, and you would have to remove it before you  
21 got on the floor.

22 Q. And what, if anything, did you observe from  
23 Ms. Christie, and what, if anything, did she say in response?

24 A. She simply said, okay, but I could tell that she was  
25 taken aback by the fact that she had to remove it and was --

1 was a little bothered by that.

2 Q. Okay.

3 JUDGE SOTOLONGO: How could you tell?

4 THE WITNESS: She just kind of looked at me like in  
5 shock a little bit, but she softly said okay and just took it  
6 off. I just could tell that she was bothered.

7 Q. BY MR. BROWN: I'm going to show you what is in evidence  
8 as General Counsel's Exhibit 72. I'm showing you, Chad, what  
9 has been introduced into evidence as General Counsel  
10 Exhibit 72. Is that -- well, can you tell, is that  
11 Jolina Christie?

12 A. Yes.

13 Q. Okay. And to the best of your recollection, is that the  
14 mask, or is it substantially similar to your recollection of  
15 the Black Lives Matter messaging on the --

16 A. Yeah.

17 Q. -- mask that Ms. Christie wore?

18 A. Yeah, it's -- I don't know if that's -- it looks like  
19 it, yes.

20 Q. And when you saw that mask, which is directly on her  
21 face, is that when you said to her that it didn't fit within  
22 the dress code?

23 A. Yes.

24 Q. Okay. After this exchange with Ms. Christie, where did  
25 you go, if you recall? What did you do?

1 A. I was with my assistant at the time, and I believe we  
2 had some other -- we were there for some other reasons, and  
3 we moved on to that.

4 Q. Okay. Later that day, did you and Ms. Christie  
5 communicate further about the Black Lives Matter messaging  
6 and the dress code?

7 A. Yes.

8 Q. Can you explain where you were and when that was?

9 A. I was coming back into our back room area, I saw her  
10 there and, you know, from her initial reaction, I felt like I  
11 needed to follow up with her, and also I could see that she  
12 had gotten emotionally upset. It looked like she had been  
13 crying possibly. So I pulled her to the side in the back  
14 room and basically asked her how she was feeling about it and  
15 just to make sure she understood why I was asking her to take  
16 it off.

17 Q. Okay. And what, if anything, do you recall saying to  
18 her about why you had asked her to remove the Black Lives  
19 Matter messaging on her mask?

20 A. I said that it was not part -- it didn't fit our dress  
21 code.

22 Q. Okay. And did you say anything else?

23 A. Well, we had a conversation. I let her -- you know, I  
24 wanted to let her speak to how she felt. She was very  
25 passionate about wanting to have a voice in the store and

1 wanting to get the message out.

2 We also, you know, talked about -- I mentioned that I  
3 had some safety concerns as well, just because it was a  
4 controversial message and that there were some -- potentially  
5 some folks that could front -- could confront her at the  
6 register. At the register you're kind of on your own a  
7 little bit, you're boxed in, so I didn't want her to be in  
8 that kind of position where someone could confront her. Of  
9 course, we would support -- I told her we would support any  
10 team member, we wouldn't tolerate that from our customers,  
11 but what happens initially would be a little bit out of my  
12 control, and I wanted her to be safe.

13 Q. Did you say to Ms. Christie that the Black Lives Matter  
14 messaging was not permitted because customers may be  
15 concerned or upset by that message?

16 MR. PETERSON: Objection, leading.

17 THE WITNESS: No.

18 JUDGE SOTOLONGO: It is leading. So why don't you  
19 rephrase the question?

20 MR. BROWN: I will ask that later. I'll show him --

21 JUDGE SOTOLONGO: Okay.

22 MR. BROWN: -- a document, thank you.

23 Q. BY MR. BROWN: When you testified earlier, just now you  
24 said that she, Jolina, wanted to get "the message out." What  
25 did you understand the message to be that Ms. Christie wanted

1 to get out?

2 MR. PETERSON: Objection, relevance and calls for  
3 speculation.

4 JUDGE SOTOLONGO: Overruled.

5 THE WITNESS: That they wanted to end the killing of  
6 black people by the police.

7 Q. BY MR. BROWN: What else, if anything, do you recall  
8 about what you said and what Ms. Christie said at this, at  
9 this meeting with her?

10 A. You know, she really didn't understand why she couldn't  
11 wear it. She felt like Whole Foods could support in some  
12 way. She talked about writing a letter to some folks that  
13 may have the ability to make changes to the policy, and I did  
14 suggest a couple folks that I had interactions with in my  
15 time in Baltimore, when we were doing some work there after  
16 the Freddie Gray uprising, so I gave her some names of some  
17 people I thought she should reach out to with her concerns.

18 Q. You mentioned Freddie Gray. Did you talk to  
19 Ms. Christie about Freddie Gray in Baltimore at that meeting  
20 or --

21 A. I had an additional --

22 Q. -- was it just an understanding?

23 A. I had an additional conversation about Freddie Gray with  
24 her at a later date. I was just sharing with her some of the  
25 stuff as Whole Foods Market that we did do in the community

1 and was trying to see if there was any way, any way we could  
2 support her in our current community.

3 Q. Who is Freddie Gray?

4 A. He was a young man that was killed by police in  
5 transport after his arrest in Baltimore.

6 Q. Is he a black man?

7 A. A black man, yes.

8 Q. Okay. And were you the -- you were working in Baltimore  
9 at the time that Freddie Gray was murdered by the police?

10 A. Yes.

11 Q. Okay. I guess I'll jump to that next conversation that  
12 you had with her about Freddie Gray in Baltimore. What is it  
13 that you recall talking about to and with Ms. Christie about  
14 Freddie Gray and Baltimore?

15 MR. PETERSON: Objection, foundation.

16 MR. BROWN: I think there's a foundation.

17 JUDGE SOTOLONGO: Excuse me, I missed the question.  
18 Could you repeat yourself?

19 MR. BROWN: Yeah.

20 Q. BY MR. BROWN: You mentioned that you had discussed the  
21 Freddie Gray Baltimore uprising with Ms. Christie, correct?

22 A. Correct.

23 Q. Okay. I want to go to that conversation where you  
24 talked about that with her.

25 A. Okay.



1 Q. Do you remember when that was?

2 A. It was a few weeks later, around the time that she had,  
3 I believe, wrote the letter or just before that. I just  
4 wanted her to know that, as Whole Foods Market, there was  
5 some opportunity for us to be involved in the community, and  
6 I wanted to support her in any ways that we could, and I  
7 explained to her some things that we did around food justice  
8 and food deserts in Baltimore, and that was an opportunity  
9 that, as Whole Foods Market, we could get involved in the  
10 community and if she had any organizations that she was  
11 involved with or any other ways that we could get involved.

12 Q. And what, if anything, did Ms. Christie say to you about  
13 organizations or whether she wanted to get involved in this?

14 A. You know, she said it sounded good and she, you know,  
15 appreciated me sharing that with her. There was an  
16 organization she mentioned, I don't recall, but it didn't  
17 sound like it fit the food aspects that we did, so she never  
18 took me up on the offer at that point.

19 Q. With regard to Ms. Christie, other than that one  
20 occasion on June 12th of 2020, did she ever wear a Black  
21 Lives Matter mask or Black Lives Matter messaging on her  
22 clothing or her face while on the clock ever again?

23 A. No.

24 Q. Did any other team member at the Columbia, Maryland  
25 store wear Black Lives Matter messaging at any time?

1 A. We did have one other team member in our bakery  
2 department that -- I believe it was a headband or a head wrap  
3 that had the messaging around the same time that I spoke to  
4 Jolina, that I let her know as well that it wasn't -- it  
5 didn't fit our policy.

6 Q. Okay. What was the messaging on the headband?

7 A. Black Lives Matter.

8 Q. Okay. And what, if anything, did you say to the team  
9 member and what, if anything, did that team member say in  
10 response?

11 A. Again, I just said, unfortunately, it doesn't fit the  
12 policy, that she'd have to remove it while in the store, and  
13 she was fine. She said okay.

14 Q. And did she remove it?

15 A. She did.

16 Q. Okay. Was Ms. Christie or this other team member ever  
17 disciplined in any way for wearing the Black Lives Matter  
18 messaging on their face?

19 A. No, no discipline.

20 Q. Okay.

21 JUDGE SOTOLONGO: I have a question before I lose my  
22 train of thought here. You still have General Counsel 72,  
23 the --

24 THE WITNESS: Yes.

25 JUDGE SOTOLONGO: Okay. In that photograph,

1 Ms. Christie -- it would appear over her apron, she's wearing  
2 this button that says social distance, 6 feet and please, I  
3 believe --

4 THE WITNESS: Yes.

5 JUDGE SOTOLONGO: Is that a button that was provided by  
6 Whole Foods to its employees or --

7 THE WITNESS: At the time, it was provided by a vendor  
8 that we worked for -- work with.

9 JUDGE SOTOLONGO: And that was approved?

10 THE WITNESS: And it was allowed. Yeah, it was approved  
11 at the time, yeah.

12 JUDGE SOTOLONGO: Okay, sorry, I just wanted to clarify.

13 MR. BROWN: Thank you. Let me show you what has been  
14 introduced into evidence as -- Your Honor, I'd like to show  
15 the witness General Counsel Exhibit 73.

16 JUDGE SOTOLONGO: Okay, go ahead.

17 MR. BROWN: I'm showing you what is in evidence as  
18 General Counsel Exhibit 73.

19 MR. PETERSON: I'm sorry, can we pause for a second? Do  
20 you mind if we go off the record for a quick second?

21 **JUDGE SOTOLONGO: Let's go off the record.**

22 **(Off the record from 9:57 a.m. to 10:02 a.m.)**

23 **JUDGE SOTOLONGO: Let's go back on the record.**

24 All right, we've had a slight break in order to make  
25 copies of the exhibit, so please proceed, Mr. Brown.

1 MR. BROWN: Thank you.

2 Q. BY MR. BROWN: Chad, do you have in front of you General  
3 Counsel Exhibit 73?

4 A. I do.

5 Q. Okay. And the top portion of the email is -- is that an  
6 email that you sent to Deng, D-e-n-g, and Melisa,  
7 M-e-l-s-a [sic], your associate store team leaders?

8 A. Yes.

9 Q. Okay. And the email below, is that the email that  
10 Jolina Christie sent to Whole Foods Market Voice, Omar Gaye,  
11 yourself, Jeff at Amazon, and Scott Allshouse?

12 A. Yes.

13 Q. Okay. Did you review this email when you received it?

14 A. I did.

15 Q. Did you have any conversations with Jolina Christie  
16 about what she had written?

17 A. I told her I thought it was a well-written letter to  
18 them and, you know, to let me know when she heard back.

19 Q. And did Ms. Christie let you know?

20 A. She did mention that she had heard back.

21 Q. Okay. And at some point -- well, any other further  
22 conversations about the letter or feedback from -- about the  
23 letter?

24 A. I asked her to send it from Whole Foods Market email,  
25 that potentially it coming from a personal email maybe got

1 lost or it went to junk. So we got her set up with the Whole  
2 Foods Market email so that she could resend it.

3 Q. Okay. I'm going to ask -- I'm going to show you General  
4 Counsel Exhibit 74. Take a look at that, if you would.

5 Mr. Woodmancy, is this -- at the top page of General Counsel  
6 Exhibit 74, is that an email that you sent back to  
7 Jolina Christie and to her team leader, Reyna Patzan-Garcia?

8 A. Yes.

9 Q. Okay. And below, is that an email that you had received  
10 from Ms. Christie on October 6th, her resignation email?

11 A. It is.

12 Q. Okay. Did you read that email when you received it?

13 A. I did.

14 Q. Okay. You see in the first line, it says, "Please  
15 accept" as my formal -- this as my -- "this letter as my  
16 formal notice of resignation, effective October 20th, 2020."  
17 Do you see that?

18 A. Yes.

19 Q. Okay. Did Ms. Christie work through her requested  
20 effective date?

21 A. She did.

22 Q. So her last day at Whole Foods was October 20th, 2020,  
23 at the Columbia, Maryland store?

24 A. Correct.

25 Q. Okay. In this letter, Ms. Christie writes, "As a woman

1 of color, I feel unsafe working for a company that is  
2 'uncomfortable' with condemning racists in store and allowing  
3 us to wear anti-racist and Black Lives Matter attire when  
4 Whole Foods has an avid history happily supporting the LGBTQ+  
5 community and gay pride events in and out of stores." Did  
6 you read that at the time?

7 A. I did.

8 Q. Did you have any understanding of what Ms. Christie  
9 meant when she wrote that she felt unsafe working for Whole  
10 Foods?

11 A. My understanding was she generally felt unsafe as a  
12 black woman in the current state of the U.S. and was unhappy  
13 that we were not allowing her to have a voice within the  
14 store.

15 Q. Were you aware of Ms. Christie -- Ms. Christie's intent  
16 to resign before October 6th and you receiving this email?

17 A. I did not.

18 Q. Okay. Were you aware of Ms. Christie applying to work  
19 for Whole Foods Market in Hawaii before receiving this  
20 October 6th email?

21 A. I did not.

22 Q. When's the first time you learned that Ms. Christie  
23 worked for Whole Foods right after she resigned from the  
24 Columbia, Maryland store?

25 A. It was more than a year later when I found out.

1 Q. Ms. Christie had a boyfriend at the store?

2 A. She did.

3 Q. Okay. Is that the one you referred to earlier, who she  
4 came to visit?

5 A. Yes.

6 Q. Okay. He was a team member?

7 A. Yeah, he worked in our bakery department.

8 Q. Okay. Did that team member, her boyfriend, also resign  
9 from the Columbia, Maryland store?

10 A. He did. He -- well, he actually was looking for -- he  
11 let us know he was looking for employment with Whole Foods,  
12 and that's the time we found out that he was looking to go to  
13 Hawaii with them.

14 Q. And did he resign in October as well?

15 A. It was a few weeks. It may have been in November when  
16 he left.

17 Q. Did you learn that he worked at Whole Foods Market in  
18 Hawaii?

19 A. I knew that he was trying to get a position there.

20 Q. Okay.

21 JUDGE SOTOLONGO: So would it be fair to say that, based  
22 on your answer, that at no point were you contacted by the  
23 folks in the Hawaii store to ask you for references regarding  
24 Helena Christie?

25 THE WITNESS: Not Jolina, no.

1 JUDGE SOTOLONGO: Did they call to ask about her  
2 boyfriend?

3 THE WITNESS: He asked me to reach out or see how I  
4 could help him.

5 JUDGE SOTOLONGO: I see. And this was sometime in  
6 November of 2020?

7 THE WITNESS: Shortly before he left, yes.

8 JUDGE SOTOLONGO: Okay, all right.

9 Q. BY MR. BROWN: In the summer of 2020, in June of 2020,  
10 do you recall any conversations with your team leader, Reyna,  
11 about the enforcement of the dress code?

12 A. Yes, yeah. We spoke with all our team leaders, but  
13 Reyna specifically, I felt like there was a lot of  
14 opportunity on her team with making sure that we were  
15 consistent, so I --

16 Q. When you say the word "opportunity," what do you mean by  
17 that?

18 MR. PETERSON: Objection, there's no foundation to this  
19 conversation, where it took place, when it took place.

20 JUDGE SOTOLONGO: Well, that comes next, doesn't it? I  
21 mean, where is it that you have a conversation and then the  
22 foundation comes after? If he says no, then that's the end  
23 of the matter, right? He's asking if he had any  
24 conversations with her and -- so go ahead.

25 Q. BY MR. BROWN: When did you have a conversation or



1 conversations with Reyna, the team leader of the front end,  
2 in June of 2020?

3 A. I spoke with her in June about, you know, my  
4 conversation with Jolina, and that if for some reason she  
5 would continue to wear it, let me have the conversation with  
6 her because I felt like it was a sensitive issue, and then I  
7 also asked Reyna to make sure that she was being consistent  
8 when team members came in, to make sure that they were in  
9 their dress code.

10 MR. BROWN: No further questions.

11 JUDGE SOTOLONGO: All right, Mr. Peterson.

12 MR. PETERSON: Your Honor, can I have 10 minutes?

13 **JUDGE SOTOLONGO: Sure. Yeah, let's go off the record**  
14 **for 10 minutes.**

15 **(Off the record at 10:12 a.m. to 10:19 a.m.)**

16 **JUDGE SOTOLONGO: All right, let's go back on the**  
17 **record.**

18 Mr. Peterson, please proceed.

19 MR. PETERSON: Thank you, Your Honor.

20 **CROSS-EXAMINATION**

21 Q. BY MR. PETERSON: Good morning, Mr. Woodmancy.

22 A. Good morning.

23 Q. I'm Matt Peterson. I'm the attorney for the NLRB. I  
24 just have some follow-up questions for you. When did you  
25 start working at the Columbia, Maryland store as the store

1 team leader?

2 A. It was end of August 2019.

3 Q. Obviously, you have a lot of duties as the store team  
4 leader. What percentage of your time -- you have an office,  
5 I presume?

6 A. Yes.

7 Q. What percentage of your time do you spend in the office  
8 as opposed to in the store?

9 A. Depends on the day, but I would say I try to keep it  
10 around 50/50 nowadays.

11 Q. Do you make it a point to greet all of your employees  
12 every day or anything like that?

13 A. I certainly do when I come in, in the morning. I make  
14 my rounds and say good morning to everyone, but I don't  
15 necessarily see everyone throughout the day.

16 Q. What's your shift?

17 A. It varies. It's always within the times that the store  
18 -- or just before the store is opened until just after the  
19 store closes, so anywhere between 6:00 a.m. and midnight.

20 Q. You work different shifts --

21 A. Yes.

22 Q. -- depending on the day?

23 A. Yes.

24 Q. All right, moving on to your discussion with Jolina on  
25 June 12th, in your testimony you said you told her that that

1 particular mask and its message doesn't fit the dress code.

2 Do you recall that testimony?

3 A. Yes.

4 Q. At that point, in June 12th, were you aware that other  
5 employees at other Whole Foods stores had been wearing Black  
6 Lives Matter masks or other type of messaging?

7 A. I don't know if it was at that time or not.

8 Q. At some point you received reports about what was  
9 happening at other stores?

10 A. At some point, yeah.

11 Q. May have been before that, may have been after --

12 A. Correct.

13 Q. -- June 12th? And that came from your store leadership?  
14 Or not your store leadership, but regional leadership, I  
15 presume?

16 A. Well, it was -- some of it was in the news and some,  
17 yeah, from leadership and other discussions.

18 Q. What was it about that particular message, why did --  
19 why did you say that particular message when you were talking  
20 to Jolina?

21 A. I said that message. I don't know. Did I say  
22 particular? I didn't mean to say particular. But I was  
23 letting her know that what she was wearing at the time did  
24 not fit the dress code.

25 Q. And what was it about that particular message that was

1 inappropriate or not within the dress code?

2 A. Well, any message at the time that wasn't related to a  
3 vendor or promoted something outside of Whole Foods Market  
4 approved messaging was not allowed.

5 Q. Did like sports logos fall within that prohibition at  
6 the time in June 12th?

7 A. Well, we certainly had times where we would make  
8 exceptions if a local sports team was in a championship game  
9 or something like that where we'd allow people to wear a  
10 jersey to work that day, but we made it very specific to an  
11 event or something like that.

12 Q. Do you still have General Counsel's 73 in front of you?  
13 The letter --

14 A. Yes.

15 Q. The email and the letter that Jolina had written?

16 A. I do.

17 Q. And so you read that letter thoroughly?

18 A. Not recently, no.

19 Q. Right, but at the time --

20 A. At the time, yeah.

21 Q. Yeah. And you thought it was well-written, I think --

22 A. I did, yeah.

23 Q. -- when you came to that? And she had raised -- she had  
24 raised these points in her letter with you in your  
25 discussions; is that right?

1 A. Yes.

2 MR. BROWN: Objection. I don't know what these points  
3 are.

4 JUDGE SOTOLONGO: I can't hear you, Mr. Brown.

5 MR. BROWN: He said you raised these points, and that's  
6 my objection. What points?

7 MR. PETERSON: Everything that she said in the letter.

8 Q. BY MR. PETERSON: All the points that she raised in the  
9 letter she had raised with you in your discussions?

10 A. I can't say that because I don't remember everything  
11 that was in the letter.

12 Q. Can you look at the letter and tell us which points you  
13 had not heard her raise with you before?

14 MR. BROWN: I'd like the witness to read the --

15 THE WITNESS: This is long, this is a long --

16 MR. PETERSON: Yeah, just as you're going, as you're  
17 reading it, if you see something that you don't recall  
18 discussing with her, then just point that out.

19 MR. BROWN: Your Honor, in this letter, Ms. Christie  
20 expresses her own personal views on things and doesn't even  
21 purport to say that she had talked to this witness about  
22 them.

23 MR. PETERSON: That's what I'm asking the witness about.

24 JUDGE SOTOLONGO: Overruled.

25 THE WITNESS: She mentions a blog post in here that I

1 wasn't aware of. She talks about HIV and AIDS patients. We  
2 didn't talk about that. Comments about Martin Luther King  
3 and his quotes. She didn't point to this particular core  
4 value with me. We didn't go into detail about systemic  
5 racism. The two points I can say for sure is the Black Lives  
6 Matter movement and LGBTQ is the only two points I can say  
7 for sure that we had a discussion about.

8 Q. BY MR. PETERSON: Okay, can you speak up? Sorry.

9 A. Sorry, Black Lives Matter and LGBTQ were the only two  
10 points that I can say we definitely had a conversation about  
11 or she mentioned in our conversations.

12 Q. You said she didn't -- you didn't discuss in detail  
13 systemic racism?

14 A. Right.

15 Q. Did she bring that up at all?

16 A. She talked about systemic racism when we talked about  
17 Freddie Gray in that situation in Baltimore and the food  
18 deserts.

19 Q. And the LGBTQ discussion, she was pointing out that  
20 Whole Foods supported or at least allowed employees to  
21 support LGBTQ issues; you recall her raising that with you?

22 A. The pride parades and things that we were participating  
23 in.

24 Q. Were you aware of employees wearing pride-related pins  
25 or buttons or lanyards in your store?

1 A. I hadn't seen them --

2 Q. You hadn't noticed?

3 A. -- myself.

4 Q. Did you think she had a good point with that distinction  
5 between LGBTQ issues and the Black Lives Matter, the  
6 distinction she made and why Whole Foods was tolerating one  
7 and not the other?

8 A. I could understand why she raised that concern.

9 Q. Do you have General Counsel 72, that photograph of  
10 Ms. Christie?

11 A. Yes.

12 Q. Can you tell where she -- where that photograph was  
13 taken?

14 A. I can't. It looks like potentially a restroom.

15 Q. Does your store have restrooms with that type in the  
16 break -- in the back room?

17 A. Yeah.

18 Q. Is this what she was wearing on the day you saw her when  
19 she came to training?

20 A. The rest of her attire I don't remember.

21 Q. So she might've been wearing that? She might've been  
22 wearing something else?

23 A. Well, if she was wearing the apron like that, I would've  
24 addressed the Pink Floyd, being able to see that, but so --  
25 but I don't recall her wearing -- what she was wearing that

1 day.

2 Q. So in your view, the Pink Floyd messaging, you would've  
3 said that if you noticed it?

4 A. Yes.

5 Q. What about the Jamaica lanyard?

6 A. That wouldn't fit our dress code as well.

7 Q. Okay, but you don't remember if she was wearing this at  
8 the time?

9 A. I don't.

10 MR. PETERSON: Nothing further, Your Honor.

11 JUDGE SOTOLONGO: I have a question or two. And of  
12 course, if I -- if my questions -- and you want to ask any  
13 questions based on mine, of course, you can.

14 So, Mr. Woodmancy, I believe your testimony was that  
15 right after you noticed, on June 12th I believe it was, right  
16 after you noticed Ms. Christie wearing the Black Lives Matter  
17 mask while in the training room, that you immediately told  
18 her that she could not wear that; is that correct?

19 THE WITNESS: Correct.

20 JUDGE SOTOLONGO: And that was correct. Before you did  
21 that, did you have to consult with -- meet with your regional  
22 or national management to confirm whether or not that message  
23 was -- or that clothing with that messaging was in violation  
24 of the rules of Whole Foods dress code or rules?

25 THE WITNESS: No, I didn't have to ask anyone.



1 JUDGE SOTOLONGO: So it was an immediate action on your  
2 part?

3 THE WITNESS: Actually, when I saw her with it and  
4 Melisa -- I asked Melisa to come with me, her being a female  
5 team member, because I was concerned, being a sensitive  
6 matter, how she may respond, and I wanted to have a female  
7 team member leadership with me as well.

8 JUDGE SOTOLONGO: Okay, all right. I believe, and  
9 correct me if I'm wrong, I believe you testified, and there  
10 was also a question, I believe it was by Mr. Brown, the  
11 question was when you saw the message and the mask, Black  
12 Lives Matter, I believe the question was what do you perceive  
13 that to mean?

14 THE WITNESS: Um-hum.

15 JUDGE SOTOLONGO: Is that correct?

16 THE WITNESS: Yes.

17 JUDGE SOTOLONGO: And your answer, if I recall  
18 correctly, was that you believe that was a message regarding  
19 the killing of George Floyd which had occurred a couple of  
20 weeks before that; is that correct?

21 THE WITNESS: It was the killing of black people in  
22 general by police, but that's what spurred the movement, yes.

23 JUDGE SOTOLONGO: And what was that perception on your  
24 part based on?

25 THE WITNESS: It was based on what I had seen,

1 discussions I've had, things that were being posted, you  
2 know, the people that were starting the movement and what  
3 they were saying.

4 JUDGE SOTOLONGO: Posted something where?

5 THE WITNESS: On social media.

6 JUDGE SOTOLONGO: I mean, online or --

7 THE WITNESS: Yeah, social medial.

8 JUDGE SOTOLONGO: I have nothing further. Any questions  
9 based on mine?

10 MR. BROWN: I do have a couple of quick, quick  
11 questions.

12 **REDIRECT EXAMINATION**

13 Q. BY MR. BROWN: You were shown, Chad, Exhibit 73, the  
14 letter.

15 A. Yeah.

16 Q. And I want you to turn to page 2, if you would, and the  
17 third -- the second full paragraph, it begins, "Chad,  
18 respectfully, explain to me." Do you see that?

19 A. Yes.

20 Q. Okay. In the third line she writes, "He also mentioned  
21 that it was due to the fact that it may upset certain  
22 customers." Do you see that?

23 A. Yes.

24 Q. Do you agree with how she characterized, Ms. Christie  
25 characterized what you said?

1 A. No, I don't agree with how that was worded.

2 Q. And that's when you testified before about what you  
3 said?

4 A. Yes.

5 Q. And also you were asked, when you were looking at that  
6 picture about -- I think it was the Pink Floyd graphic  
7 T-shirt --

8 A. Yes.

9 Q. -- underneath. When team members or if team members  
10 wore such shirts and they covered them up with their apron,  
11 did you or your team leaders tell them that they had to  
12 change?

13 A. No, if we couldn't tell what the message was and it was  
14 covered by their apron, we would let that be.

15 MR. BROWN: I don't have any further questions.

16 MR. PETERSON: Yeah, sorry, Your Honor, I have one more  
17 question.

18 JUDGE SOTOLONGO: Sure.

19 **RECROSS-EXAMINATION**

20 Q. BY MR. PETERSON: So, yeah, the Judge had asked if you  
21 had confirmed with regional leadership before telling  
22 Ms. Christie that she could not wear a Black Lives Matter  
23 mask, and I think earlier you said you didn't remember you  
24 had discussions with leadership about other employees at  
25 other stores wearing the Black Lives Matter messaging, and as

1 I recall you didn't recall whether that was before or after  
2 June 12th?

3 A. Right.

4 Q. In those discussions with regional leadership, they had  
5 made a point that Black Lives Matter messaging was  
6 specifically not approved under the dress code; is that  
7 right?

8 A. No, they didn't necessarily specify that, but it came up  
9 in conversation at meetings because of what was out in the  
10 news with the team members in Boston and stuff like that.

11 Q. Meetings with regional leadership?

12 A. Other store team leaders and regional leadership.

13 Q. And, again, you don't recall whether that was before or  
14 after June 12th?

15 A. I don't.

16 Q. And the other individual that was wearing the bandana  
17 with Black Lives Matter --

18 A. Um-hum.

19 Q. -- do you remember if that was before or after Jolina  
20 had worn it?

21 A. It was within days, I believe. It was really close.

22 MR. PETERSON: All right, nothing further.

23 JUDGE SOTOLONGO: I do have one more question, of  
24 course, just one specific that I wanted to ask. I don't know  
25 whether -- does the witness have all the exhibits before him?

1 MR. BROWN: He does not.

2 JUDGE SOTOLONGO: Show him General Counsel 76. Do you  
3 have it now? Do you have General Counsel 76 in front of you,  
4 right?

5 THE WITNESS: Yes.

6 JUDGE SOTOLONGO: Is that correct? Do you recall seeing  
7 Ms. Christie wear the mask depicted in that photo?

8 THE WITNESS: I don't recall that specific mask, no.

9 JUDGE SOTOLONGO: Okay. Just looking at the mask in  
10 that photo, and perhaps the resolution is not very good, can  
11 you tell, just off of that, whether that mask would be in  
12 violation of the employer's rules?

13 THE WITNESS: Initially, it just looks like a pattern to  
14 me. I can't tell.

15 MR. BROWN: And if it's --

16 THE WITNESS: I can't tell specifically, but --

17 MR. BROWN: -- a violation, I guess.

18 JUDGE SOTOLONGO: Right. Would that pattern be in  
19 violation of the rules?

20 THE WITNESS: No, you're allowed to wear a pattern.

21 JUDGE SOTOLONGO: Okay, no questions. No more further  
22 questions.

23 MR. PETERSON: Perhaps one follow-up based on that  
24 question?

25 JUDGE SOTOLONGO: Sure, certainly.

1 MR. PETERSON: I'm going to try to pull up an exhibit.

2 Q. BY MR. PETERSON: So the same exhibit, 76, I mean, this  
3 looks -- we asked you about the Pink Floyd in the other  
4 exhibit, but this comic book shirt that she was wearing, that  
5 was like -- you knew her quite a bit, or you saw her  
6 regularly in the store?

7 A. She was part-time, so I was -- I would see her once or  
8 twice a week, maybe, at the most.

9 Q. Did you know her as being a comic book fan or liked to  
10 wear things like this?

11 A. Not particularly. I think the Black Panther was a big  
12 movie at the time. It was a big deal.

13 MR. PETERSON: Nothing further.

14 MR. BROWN: None.

15 JUDGE SOTOLONGO: All right. Thank you very much.  
16 You're excused. Thank you for your testimony. Please do not  
17 discuss your testimony with any other witness or potential  
18 witness in this matter until the hearing is over. Thank you  
19 very much.

20 THE WITNESS: Thank you.

21 **(Witness excused.)**

22 JUDGE SOTOLONGO: Do we need to go off the record for a  
23 few minutes?

24 MR. BROWN: Yes, please.

25 **JUDGE SOTOLONGO: Let's go off the record for a few**

1   **minutes. For a minute.**

2   **(Off the record at 10:39 a.m. to 10:40 a.m.)**

3       JUDGE SOTOLONGO: All right, I've just been advised by  
4 Mr. Brown that their next witness is traveling from Virginia  
5 and she won't get here before noon. He wasn't certain, of  
6 course, of when we would be finished with the witness we just  
7 had, so we're going to go on break and resume when that  
8 witness arrives. Hopefully, it will be around noon-ish. It  
9 is now about a quarter to 11, so we'll resume when  
10 Mr. Brown -- Mr. Brown will notify us when the witness  
11 arrives.

12       MR. BROWN: Thank you.

13       JUDGE SOTOLONGO: All right, let's go off the record.

14   **(Off the record from 10:40 a.m. to 10:41 a.m.)**

15       JUDGE SOTOLONGO: So let's go back on the record.

16       All right, I actually reopened the record because I want  
17 to address a motion that Respondent made a couple of weeks  
18 ago. I was on leave at the time. I was out of the country  
19 and had not received that motion until I returned on the week  
20 of July -- I forget, July 9th, I believe it was.

21       In any event, I will address this in writing. I wanted  
22 to do it at the end of last week, but my computer went on the  
23 blink and as we speak is being taken care of, so what I want  
24 to address, I have to give all the parties a heads up. I'm  
25 going to deny the motion to sever, and the reasons are

1 several. The primary reason is that, first of all, I think  
2 we're past the halfway mark in this case, and I believe we  
3 should conclude the case. One of the main reasons for that,  
4 in my view, is that to sever the remaining portion of the  
5 case, which at this point would involve the Chicago portion  
6 of the case, the Seattle portion of the case, and the San  
7 Francisco-Oakland portion of the case, would keep -- would  
8 essentially result in the alleged discriminatees in that  
9 portion of the case being in limbo for an extended period of  
10 time.

11 As I had previously alluded to, if we were to sever now,  
12 assuming, for example, that I would get my decision out  
13 sometime in the fall, the case, whatever my decision might  
14 be, would certainly -- and all the parties would admit to  
15 this, would be appealed to the Board. At least one side if  
16 not all sides would take exception to my decision because  
17 there might be parts in my decision that one party or the  
18 other might not like.

19 So assuming that I would be able to issue the decision  
20 in the fall, and this is a lengthy case, needless to say,  
21 that would mean that the Board and I issue my decision in the  
22 fall, an exception would be taken thereafter, and perhaps,  
23 let's say, by the end of the year or the early part of next  
24 year, the case would be before the Board. It is unlikely,  
25 given the history, recent history, that the Board would rule



1 on this case until at least 9 months, if not a year after  
2 that. So now we're running into the year 2024, and it is  
3 likely, certainly, if, for example, the Respondent/Employer  
4 -- I think if the case was ruled against General Counsel, and  
5 in that case, I think that would be the end of that. I don't  
6 know if the General Counsel would take it before the Court of  
7 Appeals. I don't think that's ever happened.

8 But certainly Respondent, if the case were to go against  
9 the Respondent, if I were to find them to be in violation in  
10 this case, it is likely that -- and the Board would affirm  
11 such a decision, it is likely that Respondent would take an  
12 appeal to one of the Courts of Appeals, and that would delay  
13 the case for at least another year or so.

14 And in the meantime, all the alleged discriminatees  
15 would be left in limbo, awaiting a remedy for the alleged  
16 violations, were that to be my finding or decision, and  
17 assuming that then the Court of Appeals would affirm the  
18 Board's decision that there was a violation, then we would  
19 again have to resume the trial to hear the remaining portion  
20 of the case.

21 There's a chance, of course, were that to happen, at  
22 that point the Respondent would say let's just settle the  
23 remainder of the case, but be that as it may, even if that  
24 were to happen, that would be still 2 to 3 years down the  
25 road, and in the meantime, the case would remain in limbo, at

1 least that portion of the case, and the employees, the  
2 alleged discriminatees in that portion of the case, would be  
3 left waiting for a remedy. I don't think, under the  
4 circumstances, that would be justified.

5 Now, Respondent has raised some interesting and perhaps  
6 some valid arguments in which to sever, and namely, for  
7 example, they alleged or they argued that a lot of the  
8 evidence that we would be hearing in the next few weeks would  
9 be repetitive and cumulative. There is some merit to that  
10 argument; there is, I think, a good chance that some of the  
11 evidence would be cumulative.

12 That is particularly true, given the issues before me in  
13 this case and whether or not, for example, the evidence that  
14 we have heard so far will be one that would show, that  
15 support objective evidence and put subjective evidence as to  
16 what the motives, intent of the employees involved in this  
17 allegedly protected activity, yes, as you know, and if there  
18 is any doubt under *Eastex* and other Board rulings, and it is  
19 correct that it is the objectively understood purpose of the  
20 employees' activity and not their subjective intentions that  
21 determines whether that activity is protected.

22 Now, we have heard what is a lot of "subjective"  
23 evidence about the motivations and intents of the parties, so  
24 the individuals involved in this activity. Nonetheless, at  
25 the same time, I think -- I believe there is some evidence,

1 some kernels, shall we say, of evidence that would point or  
2 address the objective or the purpose, the objectives, purpose  
3 of that -- I don't want to say what that evidence is, that's  
4 self-evident, because ultimately it would be my review of all  
5 the circumstances, whether that testimony supports an  
6 objective or the subjective intent.

7 One of the difficulties in this case, because I think  
8 all the parties would admit, this is a novel theory of the  
9 violation, you know, is trying to separate what -- how to  
10 gauge the objective evidence in this case, the objective  
11 intent. For example, it is clear that, for example, in a  
12 typical case where there is coercive conduct alleged by the  
13 employer or a union, for that matter, it is clear the  
14 objective, for example -- so in terms of whether a statement  
15 or conduct by an employer or a union was coercive, the  
16 subjective impressions of the employees subject to that  
17 conduct is not relevant. Rather, it is objective whether  
18 that conduct was reasonably intended to coerce employees.

19 And that is relatively an easy benchmark to determine,  
20 because essentially we use a reasonable person or a  
21 reasonable employee standard, would a reasonable person or a  
22 reasonable employee in those circumstances be coerced  
23 rather -- but in fact, that employee, they would go -- that  
24 employee was actually coerced. So that's a relatively easily  
25 understood concept. Here we have a -- what I believe is a

1 completely different area or issue and how to gauge, and  
2 that's something that you would want -- I want you to address  
3 in your briefs, by the way. How do we gauge what is the  
4 objective evidence in this case? How do we perceive, in an  
5 objective sense, what the purpose of the conduct here was?  
6 Is it through the circumstances of what was occurring at the  
7 time it was occurring? Is it through the statement or  
8 testimony of the people who were engaged in the conduct and  
9 through the testimony of the expert witness and what we have  
10 heard and will be hearing in the case? How do we gauge that?  
11 How do we gauge, how do we understand what the objective  
12 purpose was for the conduct at the time it was occurring in  
13 June, July, and August of 2020?

14 That is something that, in my view, we cannot easily  
15 determine at this point, at least not without hearing all the  
16 evidence. And like I said, it's not, it's not something that  
17 can easily be gauged, as an example that I used before, of a  
18 reasonable employee, whether it's a reasonable person or a  
19 reasonable employee would be coerced in light of the conduct  
20 by the employer or the union.

21 Here, there's something else that we need to determine  
22 and how do we determine that objective purpose as opposed to  
23 the subjective intention. I think it's a fascinating  
24 question in some ways, and given the novelty of this theory  
25 of a violation, and so in summation, just to sum, I don't

1 think I can just say well, whatever the testimony of the  
2 employees in question in the Chicago, Seattle, San  
3 Francisco-Oakland portion of the case would be, it's going to  
4 be subjective and therefore cumulative and therefore it's not  
5 going to add anything in this case. I cannot make that  
6 determination at this time. Some of it certainly may be  
7 cumulative. I think it's reasonable to expect that some of  
8 the testimony we're going to be hearing is going to reflect  
9 or be similar to some of the testimony that we have heard  
10 from the employees we questioned so far. But some of it may  
11 be different, too, and there may be some circumstances or  
12 evidence that arises out of the coming testimony that may  
13 also provide me with at least clues, if not a foundation, for  
14 what I will determine later on to be the objective standard.

15 So in light of that, in light of the reasons, I'm going  
16 to deny the motion to sever. I'm telling you now so that we  
17 can plan ahead and plan to proceed as we had previously  
18 determined. Like I said, we are past the halfway mark in  
19 this case, and ultimately, I think it's better that we wrap  
20 it up and hopefully, unless unforeseen circumstances at this  
21 point intervene, we should be finished by the end of August,  
22 and then we can proceed to brief the case and make a decision  
23 if there's nothing left hanging. So I will address that in  
24 writing -- I will essentially -- but it will be essentially  
25 along the lines that I have just addressed.

1           All right, so let's go off the record, and we'll resume  
2 when the witness arrives.

3 (Whereupon, at 10:54 a.m., a lunch recess was taken.)

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1                   **A F T E R N O O N   S E S S I O N**

2                                   **(Time Noted: 12:58 p.m.)**

3           **JUDGE SOTOLONGO: Let's go on the record.**

4           All right, we're resuming our session. Apparently, the  
5 Respondent's witness is now present.

6           Mr. Brown, you may call your next witness.

7           MR. BROWN: Yes, Your Honor. Whole Foods Market calls  
8 Nick Stegeman.

9           You can take your mask off if you're comfortable doing  
10 so.

11          JUDGE SOTOLONGO: Hi. Would you please, sir, raise your  
12 right hand?

13          (Whereupon,

14                                   **NICK STEGEMAN**

15 was called as a witness by and on behalf of the Respondent  
16 and, after having been duly sworn, was examined and testified  
17 as follows:)

18          JUDGE SOTOLONGO: Thank you. Please take a chair.  
19 Could you please spell your name for us and give us your  
20 address? Your business address will suffice.

21          THE WITNESS: My name is Nicholas Stegeman,  
22 N-i-c-h-o-l-a-s S-t-e-g-e-m-a-n.

23          JUDGE SOTOLONGO: S-t-s-t?

24          THE WITNESS: S-t-e-g-e-m-a-n.

25          JUDGE SOTOLONGO: Okay, thank you.

1 THE WITNESS: My business address is 11173 West Broad  
2 Street, Glen Allen, Virginia 23060.

3 JUDGE SOTOLONGO: Thank you. Please proceed, Mr. Brown.

4 MR. BROWN: Thank you.

5 **DIRECT EXAMINATION**

6 Q. BY MR. BROWN: Mr. Stegeman, who's your employer?

7 A. Whole Foods Market.

8 Q. How long have you been employed by Whole Foods?

9 A. Sixteen and a half years.

10 Q. Okay. And just briefly, what positions have you held at  
11 the Whole Foods Market and where?

12 A. I started at the Charlottesville, Virginia store as a  
13 cashier and then supervisor, associate customer service team  
14 leader, customer service team leader, produce team leader,  
15 and then transferred to the Short Pump store in Glen Allen as  
16 associate store team leader.

17 Q. The position you hold right now is associate store team  
18 leader; is that correct?

19 A. Correct.

20 Q. And is the Glen Allen, Virginia store also known as  
21 Short Pump?

22 A. Yes.

23 Q. How long have you been the associate store team leader  
24 at the Glen Allen store?

25 A. Four years.



1 Q. I want to bring your attention back to the summer of  
2 2020, and could you tell me, in the summer of 2020, who was  
3 the store team leader at the Glen Allen store?

4 A. Donna Stulken.

5 Q. And you're one of the associate store team leaders, was  
6 there another associate store team leader?

7 A. Yes, Julius Wormley.

8 Q. You are familiar with Justine O'Neill?

9 A. Yes.

10 Q. Did she work at that store?

11 A. Yes.

12 Q. In what capacity did Ms. O'Neill work at the Short Pump  
13 or Glen Allen store?

14 A. She was a team member on the specialty team.

15 Q. And what is specialty? What does that include? What  
16 services does that provide?

17 A. That's the area of the store that includes specialty  
18 cheeses, beer, wine, pasta, olives.

19 Q. Who was the team leader of the specialty team in the  
20 summer of 2020?

21 A. Danny Yacher.

22 Q. Were you familiar with the dress code in the summer of  
23 2020?

24 A. Yes.

25 Q. What was your understanding of what was permitted or not

1 permitted with regard to team members on the clock working?  
2 What were they permitted or not permitted to wear on their  
3 tops?

4 A. Yes. So the dress code stated that you could not wear a  
5 shirt with any kind of words, slogans, advertising,  
6 promotions, pictures, anything like that. It needed to be a  
7 plain shirt, and that also applied to the masks.

8 Q. Were there any exceptions like, for example, if Whole  
9 Foods issued a shirt or a vendor?

10 A. Yes, we could wear vendor shirts during -- if that  
11 particular vendor was on promo and then Whole Foods Market  
12 would issue shirts periodically for different events.

13 Q. In 2020, I know this is leading, but do you recall that  
14 we all started wearing masks?

15 A. Yes.

16 Q. Okay. How did the masks come into Whole Foods and to  
17 your store, in particular, with regard to the dress code?

18 A. Initially, when the pandemic started, we -- you know, we  
19 weren't wearing masks, of course, and then they sent out a  
20 mask standard operating procedure in April that stated that  
21 team members should be wearing masks and that it would follow  
22 the same dress code guidelines as everything else.

23 Q. If you, you personally, as the associate store team  
24 leader, saw a team member out of compliance with the dress  
25 code in any capacity, what was it that you did or may have

1 done?

2 A. I would have a conversation with that team member and  
3 make sure that they understood that what they were wearing  
4 was not in the dress code and then give them an opportunity  
5 to either change what they were wearing to become compliant  
6 with the dress code or they could go home and come back when  
7 they were compliant.

8 Q. What kind of instances or issues came up with regard to  
9 the dress code before June of 2020 in which you may have had  
10 these conversations?

11 A. Typically, it would be for a team member coming in with  
12 ripped jeans or with a shirt that had some type of logo or  
13 advertising on it, and if that were to happen, then we would  
14 ask them to either turn their shirt inside out or we would  
15 give them a Whole Foods shirt that they could wear instead.  
16 If they were able to go home and change and come back to  
17 work, then they were allowed to do so. And then  
18 occasionally, if it was not something egregious, then we  
19 would counsel them and say be sure that you're not wearing  
20 that particular item again in the future.

21 Q. I want to call your attention to May 25th of 2020. Were  
22 you or did you become aware of the murder of George Floyd by  
23 the Minneapolis police in and around May 25th of 2020?

24 A. Yes, of course.

25 Q. How did you become aware of this?

1 A. Through news reports.

2 Q. And were you aware of Black Lives Matter protests  
3 springing up in the immediate aftermath of his murder and  
4 throughout the summer of 2020?

5 A. Yes, absolutely.

6 Q. Okay, what were you aware of?

7 A. That people were protesting the killing of people of  
8 color by police. In Richmond, there were a number of such  
9 protests.

10 Q. Your store is located in Glen Allen, Virginia, on Broad  
11 Street; I think you testified that, correct?

12 A. Yes.

13 Q. Okay. And is Glen Allen just outside the city limits of  
14 Richmond?

15 A. It's about 10 miles outside of city center.

16 Q. Okay. Is there another Whole Foods in the Richmond  
17 area?

18 A. Yes.

19 Q. Where is that?

20 A. Also on Broad Street. It's called West Broad Street.

21 Q. Okay. And what, if anything, do you know about the  
22 Black Lives Matter protests in the city of Richmond at the  
23 end of May and throughout June? What did you learn? What do  
24 you know about?

25 A. There were usually nightly protests, and a number of

1 times they were turning violent. A number of buildings were  
2 set ablaze, looting, cars being tipped over and set ablaze.  
3 The Whole Foods at West Broad Street, the windows were  
4 smashed, and people came into the store and knocked over  
5 displays, spray painted, things of that nature.

6 Q. What, if anything, did you or the team members in your  
7 store do, if anything, to assist the sister store on Broad  
8 Street in Richmond?

9 A. We wanted to get them open as quickly as possible, and  
10 so we sent team members to help clean up all of the smashed  
11 wine bottles and debris.

12 Q. You testified that you understood that these protests  
13 related to Black Lives Matter.

14 A. Yes.

15 Q. What did you understand, personally, Black Lives Matter  
16 to be about?

17 A. To be about the racially motivated killing of people of  
18 color by the police.

19 Q. Do you support Black Lives Matter?

20 A. I think that it's a good movement.

21 Q. With regard to your store, were there any Black Lives  
22 Matter rallies or protests in or around your store the summer  
23 of 2020?

24 A. Yes, they had planned a protest and rally for the Short  
25 Pump area, and they were going to meet at the Short Pump Town

1 Center, which is the local mall, and walk down Broad Street  
2 towards Richmond, and it's about 3 miles from my store to the  
3 Short Pump Town Center, so -- and then they were just going  
4 to walk all the way to Richmond.

5 Q. Did that Black Lives Matter rally occur?

6 A. Yes

7 Q. Was it peaceful? Was it violent?

8 A. It was mostly peaceful. They ended up bypassing our  
9 store because they realized that it was too far of a walk,  
10 and so they went to the Willow Lawn area, which is about  
11 halfway between our store and downtown.

12 Q. What, if any, precautions did you and leadership at the  
13 Short Pump store take as it related to the planned Black  
14 Lives Matter rally?

15 A. After consulting with our regional leadership, we  
16 decided that it would be best to preemptively board up the  
17 windows to prevent them from being broken, so we did that.

18 Q. With regard to your testimony about going to your store,  
19 the protestors, do you mean walk past your store or actually  
20 go to your store?

21 A. No, there were some -- when the West Broad Street store  
22 was looted, there were some slogans spray-painted on the  
23 wall, disparaging comments about Jeff Bezos, the Amazon CEO,  
24 and there were social medial threats specifically to our  
25 store. They were going to do the same thing they did

1 downtown.

2 Q. With regard to apparel that team members were wearing,  
3 do you recall the first time that any team member at your  
4 store, at the Short Pump store, wore Black Lives Matter  
5 messaging on their clothing or face mask in any way?

6 A. June 25th, I think, was the first instance of a team  
7 member wearing it while working.

8 Q. What, if anything, do you recall about that? Can you  
9 provide the Judge with some detail?

10 A. There was a store supports team member named  
11 Keeron (ph.) Scott, who is porter on the store support team,  
12 and he wore a Black Lives Matter mask to work. He was spoken  
13 to by Donna Stulken, informed that it was in violation of the  
14 dress code policy. They had a conversation, and he complied  
15 and took the mask off; he donned a generic mask.

16 Q. Did Ms. Stulken share this information with you?

17 A. That they had a conversation, yes.

18 Q. What, if anything, did you and Ms. Stulken talk about  
19 regarding the dress code of the store after Mr. Scott,  
20 Keeron Scott, had been advised that his mask with the Black  
21 Lives Matter messaging was against dress code?

22 A. Ms. Stulken sent an email to the regional team, just  
23 informing them of what had happened and got further  
24 clarification that yes, in fact, the dress code policy does  
25 apply to masks, so that would mean that no words, slogans,

1 messaging, or anything could be on a mask. She then sent an  
2 email out to the entire leadership group at the Short Pump  
3 store to be sure that everybody understood that this is the  
4 dress code, this is what we're following, and to please make  
5 sure that all team members are in compliance.

6 Q. When you received that email or after you received that  
7 email, what, if anything, did you do on June 25th to -- in  
8 accordance with the instruction to pay attention to the dress  
9 code?

10 A. There was another team member in the store, he was a  
11 produce team member, and he had on a mask that had grinning  
12 teeth on it, a smile, and I asked him to please change his  
13 mask because it was not in compliance with the dress code,  
14 and he immediately complied.

15 JUDGE SOTOLONGO: Excuse me, I misunderstood. What was  
16 on his mask?

17 THE WITNESS: It was a graphic of the mouth portion of a  
18 skull with just grinning teeth.

19 JUDGE SOTOLONGO: Okay, I see.

20 MR. BROWN: I'd like to mark for identification  
21 Respondent's 74, a two-page document, and show the witness.

22 **(Respondent's Exhibit 74 marked for identification.)**

23 Q. BY MR. BROWN: Mr. Stegeman, I'm showing you a document  
24 we've marked for identification as Respondent's Exhibit 74,  
25 which is a two-page document, and I'm going to call your



1 attention to the first email which is on the bottom of the  
2 first page, and it says Donna Stulken, dated June 25th, 2020,  
3 to MA SPP all team leaders, and then MA SPP store leadership.  
4 Do you see that?

5 A. Yes.

6 Q. Okay. Who was this sent to, this first email?

7 A. So this was sent to all of the team leaders in the  
8 store, of which there are nine, so those are the different  
9 department heads as well as myself and Julius as store  
10 leadership.

11 Q. Okay. The subject matter reads, "Dress Code - Review  
12 with your TMs asap." What does that mean?

13 A. Donna sent this out just to make sure that all the teams  
14 were on board with the dress code and that everybody  
15 understood what the expectations were and to have team  
16 members or have team leaders, rather, cover that with team  
17 members in huddles and things of that nature.

18 Q. Huddles, meaning small meetings?

19 A. Yes, yes, small team site meetings.

20 Q. You weren't having large meetings at the store --

21 A. No, no.

22 Q. -- during COVID, were you?

23 A. No, absolutely not.

24 Q. Okay. At the bottom line on page 1 of Exhibit R-74,  
25 Respondent 74, it says, "With our new uniform item, a face

1 mask, this has presented another item that does still need to  
2 comply with our dress code." Do you see that?

3 A. Yes.

4 Q. Okay. Was that part of any discussions that you had  
5 with Ms. Stulken?

6 A. Yes, yes. She just wanted to make sure that we all  
7 understood that the normal dress code expectations applied to  
8 all items, including the face mask.

9 Q. I'm going to ask you about the first, the email at the  
10 top of the page, which is dated July 3rd --

11 A. Um-hum.

12 Q. -- also from Donna Stulken to all the team leaders and  
13 store leadership at the Short Pump store. SPP is the  
14 initials for the Short Pump store?

15 A. Correct.

16 Q. Okay. This is dated July 3rd. Do you know why  
17 Ms. Stulken sent this email out?

18 A. Yes, between the 25th of June and the 3rd of July there  
19 were a number of additional team member issues with being out  
20 of dress code, including wearing Black Lives Matter masks.

21 Q. And what else -- what other violations of the dress code  
22 occurred at that time?

23 A. There were things that happened regularly, a team member  
24 wearing sweatpants or wearing a shirt with some kind of  
25 messaging or logo on it advertising products, things of that

1 nature. And those are always, always --

2 Q. Ms. Stulken writes, "If you have not spoken to every  
3 team" -- TM, "team member on your team, this needs to be a  
4 priority." Do you see that?

5 A. Yes.

6 Q. Did you speak to Danny Yachen [sic], who is the team  
7 leader of the specialty team?

8 A. Did I speak with him specifically? No.

9 Q. Were you aware of whether Mr. Yachen, in fact, held  
10 huddles with his team?

11 A. Yes, he did.

12 Q. Okay. And what was the message that Mr. Yachen was  
13 directed to relay to his team members?

14 MR. PETERSON: Objection, foundation.

15 JUDGE SOTOLONGO: Okay, why don't you provide some  
16 foundation? Maybe I misheard the question, but --

17 MR. BROWN: He said he didn't speak with Mr. Yacher  
18 about it, and then the question is --

19 JUDGE SOTOLONGO: Well, give it to me. I want you to  
20 address me. What was the question?

21 MR. BROWN: The question was what information was  
22 Mr. Yacher asked or directed to convey to his team members on  
23 the specialty team.

24 MR. PETERSON: Yeah, objection, foundation. Asked by  
25 who, told by who? What is the source of this person's

1 knowledge?

2 JUDGE SOTOLONGO: Well, the first question was an  
3 instruction to be -- what instruction, if any -- was an  
4 instruction given to him, number one. So we'll get from the  
5 when and then what the nature of the objection was.

6 MR. BROWN: Thank you.

7 Q. BY MR. BROWN: Was an instruction given to Mr. Yacher,  
8 Donnie, Danny, to address his team members about the dress  
9 code?

10 A. Yes, all team leaders were given that.

11 Q. Did you at some point learn that, in fact, he had had  
12 conversations with team members, including the Charging Party  
13 Justine O'Neill, about the dress code?

14 MR. PETERSON: Objection, foundation.

15 JUDGE SOTOLONGO: No.

16 MR. PETERSON: Who's giving this instruction?

17 JUDGE SOTOLONGO: Overruled. Once he answered yes, then  
18 the next question is when did you have this communication?  
19 You cannot establish a foundation before you even know  
20 whether the item or the question was -- where the  
21 conversation was at. First question is did you have a  
22 conversation with so-and-so about this. If the answer is  
23 yes, then you start a foundation. If the answer is no, ball  
24 game is over; you move to another subject.

25 MR. PETERSON: He already said no to that question, Your

1 Honor.

2 JUDGE SOTOLONGO: What was that?

3 MR. PETERSON: He was asked if he had a conversation  
4 with Mr. Yacher --

5 MR. BROWN: No, I just asked --

6 MR. PETERSON: -- and he said no.

7 MR. BROWN: I just asked if he learned whether  
8 Mr. Yacher had a conversation --

9 JUDGE SOTOLONGO: Right, exactly.

10 MR. BROWN: -- with his team members, including --

11 JUDGE SOTOLONGO: And the answer --

12 MR. BROWN: -- Justine O'Neill, and I don't know --

13 JUDGE SOTOLONGO: If yes, then you established a  
14 foundation for that, so go ahead.

15 THE WITNESS: Yes.

16 Q. BY MR. BROWN: How did you learn that information?

17 A. After there was an incident with Ms. O'Neill wearing a  
18 mask, we were informed that that conversation had taken place  
19 the day prior, and then that was confirmed by Mr. Yacher.

20 MR. BROWN: I'd like to move Respondent's 74 into  
21 evidence.

22 MR. PETERSON: No objection.

23 JUDGE SOTOLONGO: All right, Respondent's Exhibit 74 is  
24 admitted.

25 **(Respondent's Exhibit 74 received in evidence.)**

1 Q. BY MR. BROWN: Between June 25th and July 14th of 2020,  
2 I think you testified that Keeron Scott had worn a Black  
3 Lives Matter mask; is that correct?

4 A. Yes, that's right.

5 Q. And did you learn of any other team members, between  
6 June 25th and July 14th, who had also worn Black Lives Matter  
7 messaging on their mask or any other article of clothing  
8 while working at the store?

9 A. Yes, there was a bakery team member, Francisco Rollins  
10 (ph.), who wore a mask on a number of occasions.

11 Q. And what, if anything, do you know or understand was  
12 told to Francisco Rollins about whether he was permitted to  
13 wear Black Lives Matter messaging on his mask?

14 MR. PETERSON: Objection, foundation and calls for  
15 hearsay.

16 JUDGE SOTOLONGO: Sustained. You could ask him how did  
17 you learn about Francisco?

18 Q. BY MR. BROWN: Okay. How do you know about Francisco  
19 Rollins wearing Black Lives Matter messaging on a face mask  
20 on a number of occasions between June 25th and July 14th?

21 A. It was communicated via email from his leadership.

22 Q. Was Mr. Rollins permitted to wear Black Lives Matter  
23 messaging on the occasions that he wore it between June 25th  
24 and July 14th?

25 A. No, he was asked to please change his mask to be in

1 compliance with the dress code.

2 Q. On July 14th of 2020, did you communicate with  
3 Justine O'Neill relating to any part of her apparel or the  
4 dress code?

5 A. Yes.

6 Q. In what way? What was the issue, what was the  
7 communication?

8 A. She was wearing a Black Lives Matter mask, and I  
9 approached her and asked her to -- informed her that it was  
10 not in compliance with the dress code, and I asked her to  
11 please change it to a black Whole Foods Market mask or a blue  
12 disposable mask.

13 Q. Okay. And what, if anything, did Ms. O'Neill say to you  
14 or do?

15 A. She didn't say anything. She gave me a look and then  
16 took off the Black Lives Matter mask and donned a different  
17 mask.

18 MR. BROWN: I'll show you what we marked for  
19 identification as Respondent's Exhibit 75.

20 **(Respondent's Exhibit 75 marked for identification.)**

21 Q. BY MR. BROWN: Mr. Stegeman, I'm showing you what has  
22 been marked for identification as Respondent's Exhibit 75,  
23 which is a one-page document, and I'll ask you to look at the  
24 first email, which is about a third of the way down that  
25 begins with "From Nicholas Stegeman," dated July 14th, 2020.

1 Do you see that?

2 A. Yes.

3 Q. Okay. Is this an email that you sent?

4 A. Yes.

5 Q. Okay. And who are the individuals that you sent the  
6 email to?

7 A. It was sent to Lonnie Jones, who was the associate team  
8 leader on the specialty team at the time; Danny Yacher, the  
9 team leader on specialty at the time; Donna Stulken, store  
10 team leader; and Julius Wormley, associate store team leader,  
11 were carbon copied.

12 Q. Why did you send this email?

13 A. To inform everyone that Justine had a dress code  
14 violation and what course I took.

15 Q. In the second paragraph, you write about Michelle  
16 telling you something. What is it that you were conveying in  
17 that second paragraph?

18 A. Michelle, who was the cheese buyer at the time on  
19 specialty, informed me that when Justine had come in for her  
20 shift that morning, she had on a blue mask, and she then  
21 changed into a Black Lives Matter mask at some point.

22 Q. The email above, at the top of the page, also dated  
23 July 14th, from Danny, Daniel Yacher, to yourself and others,  
24 did you receive that email?

25 A. Yes.



1 Q. And with regard to the content of that email, is this  
2 when you learned, as you testified before, that in fact, he  
3 had -- Danny Yacher had spoken to Justine O'Neill about the  
4 dress code the day before?

5 A. Yes.

6 MR. BROWN: I would ask --

7 JUDGE SOTOLONGO: What is Mr. Yacher's position?

8 THE WITNESS: He is the specialty team leader.

9 Q. BY MR. BROWN: So he was Justine O'Neill's team leader?

10 A. Yes.

11 MR. BROWN: Okay. Your Honor, I would ask to move  
12 Respondent's 75 into evidence.

13 MR. PETERSON: No objection.

14 JUDGE SOTOLONGO: All right. Respondent's 75 is  
15 admitted.

16 **(Respondent's Exhibit 75 received in evidence.)**

17 Q. BY MR. BROWN: With regard to your communications with  
18 Ms. O'Neill on July 14th, you did the talking. She didn't  
19 say anything in response, correct?

20 A. Correct.

21 Q. Okay. You saw the mask, though?

22 A. Yes.

23 Q. And what did the mask say?

24 A. I'm not sure if it said BLM or Black Lives Matter. I  
25 can't remember.

1 Q. Do you understand BLM to be an acronym for Black Lives  
2 Matter?

3 A. Yes, sir.

4 Q. Okay. What did you understand the message on her mask  
5 to mean?

6 A. I understood that the Black Lives Matter movement was to  
7 draw attention to help end the racially motivated killing of  
8 individuals by the police, so by wearing a mask, she was just  
9 trying to keep that into the public consciousness.

10 Q. That was your view of it, correct?

11 A. Yes.

12 Q. Okay. Now, after you had addressed Ms. O'Neill about  
13 the face mask, do you recall receiving or reading an email  
14 that Ms. O'Neill had sent?

15 A. Yes. At the end of her shift, she sent an email to the  
16 entire store as well as other people.

17 Q. Mr. Stegeman, what, if anything, do you recall about the  
18 letter that -- or the email that Ms. O'Neill sent on  
19 July 14th?

20 MR. PETERSON: Objection, best evidence rule.

21 MR. BROWN: Best evidence? Best evidence is --

22 JUDGE SOTOLONGO: You know, I have to admit, I didn't  
23 hear the question because I was reading the last exhibit.  
24 Could you repeat your question, please?

25 MR. BROWN: My question was what do you recall about the

1 email that she sent?

2 JUDGE SOTOLONGO: This is an email from whom?

3 MR. BROWN: From Justine O'Neill. She sent -- well, all  
4 right.

5 MR. PETERSON: I think it's an email that's in evidence.

6 MS. SCHAEFER: It's in evidence.

7 MR. BROWN: It's in evidence.

8 MR. PETERSON: General Counsel 69.

9 MR. BROWN: I'm asking him what he remembers about it.

10 MR. PETERSON: And I'm saying the best evidence is --

11 JUDGE SOTOLONGO: No, overruled. He can tell what he  
12 recalls, and if he's wrong, this exhibit will tell everybody,  
13 right? Go ahead.

14 THE WITNESS: What do I recall from the email?

15 MR. BROWN: Yeah, what do you recall?

16 THE WITNESS: Was Justine stating that she didn't agree  
17 with the policy and that team members should be able to wear  
18 a Black Lives Matter mask if they wished.

19 Q. BY MR. BROWN: Were you aware of other Whole Foods  
20 Market stores, by this time, by July 14th, who had team  
21 members also wearing Black Lives Matter messaging who were  
22 also told that that was against dress code?

23 A. Yes.

24 Q. And how were you aware of that?

25 A. It was in the news.

1 MR. BROWN: Let me show you what has been introduced  
2 into evidence as General Counsel's Exhibit 69. Your Honor,  
3 this is -- oh, you got it. This is the email that --

4 JUDGE SOTOLONGO: GC-69?

5 MR. BROWN: Yes.

6 JUDGE SOTOLONGO: Okay.

7 Q. BY MR. BROWN: Turn to the last page. Is this,  
8 Mr. Stegeman, the email that you recall and you just  
9 testified that you reviewed on July 14th?

10 A. Yes.

11 Q. Okay. Did you discuss this email from Ms. O'Neill with  
12 Ms. O'Neill?

13 A. No.

14 Q. In the first paragraph of this document that begins with  
15 "To whom it may concern," she writes, Ms. O'Neill, that Whole  
16 Foods Market has made a public Black Lives Matter statement.  
17 Do you see that?

18 A. Yes, I see that.

19 Q. Okay. Did Whole Foods Market make a public statement  
20 that explicitly supported Black Lives Matter?

21 A. No.

22 Q. In your store, was there signage or electronic signage  
23 saying that Whole Foods supported the black community?

24 A. Yes, in front of the store.

25 Q. And that Whole Foods did not tolerate discrimination?

1 A. Correct.

2 JUDGE SOTOLONGO: Was that a poster, a banner --

3 THE WITNESS: It was a digital media screen that flashed  
4 current sales and things of that nature on it.

5 Q. BY MR. BROWN: The digital media screen did not say the  
6 words Black Lives Matter, did it?

7 A. No, it did not.

8 Q. Were you aware of any allegations of race discrimination  
9 in the Short Pump/Glen Allen, Virginia store?

10 A. No.

11 Q. Were you aware of any allegations that people of color  
12 were not being hired or promoted in the Short Pump/Glen  
13 Allen, Virginia store?

14 A. No.

15 Q. Had Ms. O'Neill been disciplined in any way for wearing  
16 the Black Lives Matter mask that she wore on July 14th?

17 A. No.

18 Q. Had Keeron Scott and Francisco --

19 A. Rollins.

20 Q. -- Rollins been disciplined in any manner for wearing  
21 the Black Lives Matter mask that you have testified they wore  
22 at the store?

23 A. No.

24 Q. Did they receive any attendance points?

25 A. No.

1 Q. Did Ms. O'Neill wear a Black Lives Matter mask on any  
2 other occasion?

3 A. Yes.

4 Q. When was that?

5 A. One month later, on August 14th.

6 Q. And what, if anything, do you recall about that?

7 A. I had come in for my shift in the morning, and she was  
8 opening at the cheese counter, so when I was making my  
9 rounds, I noticed she had a Black Lives Matter mask on. I  
10 then asked her to please remove the mask and to don a black  
11 Whole Foods Market mask or a blue disposable mask since the  
12 Black Lives Matter mask was not in compliance with our dress  
13 code. She then responded that she could not do that, so I  
14 then responded to her then I'm going to need to ask you to  
15 leave, to clock out and leave for the day until you can be  
16 compliant with the dress code.

17 Q. And what, if anything, did she say in response?

18 A. She said okay, and she went and clocked out and left for  
19 the day.

20 Q. Anything else said between the two of you?

21 A. No.

22 MR. BROWN: I'd like to mark for identification, Your  
23 Honor, Respondent's Exhibit 76, which is a one-page document.  
24 **(Respondent's Exhibit 76 marked for identification.)**

25 Q. BY MR. BROWN: Mr. Stegeman, I'm showing you what has

1 been marked for identification as Respondent's Exhibit 76.

2 Can you identify this document, please?

3 A. Yes, this is an email that I sent on August 14th.

4 Q. 2020?

5 A. Correct.

6 Q. And who did you send it to?

7 A. This was sent to Lonnie Jones, associate team leader for  
8 specialty; Danny Yacher, team leader for specialty; and a  
9 carbon copy to Donna Stulken, store team leader, and  
10 Julius Wormley, associate store team leader.

11 Q. And is this an accurate, a true and accurate summary of  
12 the interaction that you had with Ms. O'Neill on the morning  
13 of August 14th, 2020?

14 A. Yes, it is.

15 MR. BROWN: I will ask that Respondent's 76 be moved  
16 into evidence.

17 MR. PETERSON: No objection.

18 JUDGE SOTOLONGO: Respondent's 76 is admitted.

19 **(Respondent's Exhibit 76 received in evidence.)**

20 Q. BY MR. BROWN: In August of 2020 -- let me withdraw that  
21 question. Do you recall ever seeing a pin on Ms. O'Neill's  
22 apron that said Nasty Woman?

23 A. I do not recall that, no.

24 Q. Do you ever recall seeing a pin on Ms. O'Neill's apron  
25 that -- Bell's or Bell's Beer?

1 A. I do not recall that, no.

2 Q. Okay. Do you recall -- well, let me ask you this. In  
3 August of 2020, do you recall Ms. O'Neill wearing a pin on  
4 her apron that said Unions?

5 A. Yes.

6 JUDGE SOTOLONGO: Said what?

7 MR. BROWN: Unions. I'm going to mark for  
8 identification a one-page document, Respondent's 77, which  
9 was produced by Ms. O'Neill, and it is too small for me to  
10 tell what number it is, Your Honor. Give me one second,  
11 please.

12 MS. SCHAEFER: It's 16.

13 MR. BROWN: Okay. It says Justine O'Neill, 16, in the  
14 smallest print humanly possible.

15 JUDGE SOTOLONGO: You're marking it as 77?

16 MR. BROWN: Yes.

17 **(Respondent's Exhibit 77 marked for identification.)**

18 JUDGE SOTOLONGO: Okay.

19 Q. BY MR. BROWN: Mr. Stegeman, I'm showing you what's been  
20 marked for identification as Respondent's Exhibit 77. Do you  
21 recognize this person, and do you recognize the pin?

22 A. It appears to be Justine O'Neill, and yes, I recognize  
23 the pin.

24 Q. Okay. What does the pin say?

25 A. "Unions protect workers."



- 1 Q. Okay. And do you recall Ms. O'Neill wearing that pin?
- 2 A. I do.
- 3 Q. At work?
- 4 A. Yes.
- 5 Q. Okay. And when was that?
- 6 A. In August of 2020.
- 7 Q. Okay. And for how long did Ms. O'Neill wear that pin,
- 8 if you know?
- 9 A. I couldn't tell you an exact timeline. I'd probably say
- 10 for a few days.
- 11 Q. Okay. Did any other team members wear the same pin?
- 12 A. Yes.
- 13 Q. How many other team members?
- 14 A. Two that I know of. Keeron Scott and a produce team
- 15 member, C.J.
- 16 Q. And for how long did they wear the same pin?
- 17 A. For maybe 2 hours, and then they took it off.
- 18 Q. Did you or anyone in leadership at the store advise
- 19 Ms. O'Neill or the two other team members that the unions pin
- 20 was not permitted or it violated the dress code?
- 21 A. No.
- 22 Q. Did the unions pin violate the dress code in any way?
- 23 A. No.
- 24 Q. And did you receive instruction from regional leadership
- 25 about this pin?

1 A. Not about this specific pin, but about union pins in  
2 general, yeah.

3 Q. And what was that instruction?

4 A. Just that the team members were allowed to wear union  
5 pins.

6 MR. BROWN: I would move Respondent's 77 into evidence,  
7 Your Honor.

8 MR. PETERSON: No objection.

9 JUDGE SOTOLONGO: Respondent's 77 is admitted.

10 **(Respondent's Exhibit 77 received in evidence.)**

11 JUDGE SOTOLONGO: Mr. Stegeman, did you take this photo?

12 THE WITNESS: I did not take this photo, no.

13 JUDGE SOTOLONGO: Okay, I assume this was produced by  
14 Ms. O'Neill through the subpoena.

15 MR. BROWN: It was, Your Honor.

16 JUDGE SOTOLONGO: Okay, very well.

17 MR. BROWN: I do not have any further questions.

18 JUDGE SOTOLONGO: All right. Mr. Peterson.

19 MR. PETERSON: Can I have 10 minutes, Your Honor?

20 **JUDGE SOTOLONGO: Yes. Let's go off the record for 10**  
21 **minutes.**

22 **(Off the record at 1:41 p.m. to 1:56 p.m.)**

23 JUDGE SOTOLONGO: Mr. Peterson, please proceed.

24 MR. PETERSON: Thank you, Your Honor.

25 **CROSS-EXAMINATION**

1 Q. BY MR. PETERSON: Good afternoon, Mr. Stegeman.

2 A. Stegeman, yes, sir.

3 Q. I'm Matt Peterson. I'm the attorney with the NLRB. I  
4 just have a few follow-up questions about your earlier  
5 testimony. One of the things you were asked about is your  
6 understanding of Black Lives Matter and the Black Lives  
7 Matter message. Have you participated in any protests  
8 yourself --

9 A. No.

10 Q. -- or been involved? You understand that other people  
11 view Black Lives Matter as having a broader message? Is that  
12 your understanding, or do you believe everybody --

13 A. Now? Yes.

14 Q. And what is that broader message that you understand the  
15 Black Lives Matter message to mean?

16 A. Just a much broader sense of social justice and support  
17 for the black community.

18 Q. In elements outside of policing, is that what you're  
19 referring to? It's not limited to policing?

20 A. Correct.

21 Q. Some people say "systemic racism." Have you heard that  
22 phrase?

23 A. I've heard the phrase, yes.

24 Q. And you understand that as being a component of the  
25 Black Lives Matter message?

1 A. Yes.

2 Q. Do you still have Respondent's 74 in front of you?

3 A. Yes.

4 Q. And that is the June 25th email from Donna. And then  
5 the July 3rd follow-up.

6 A. Yes.

7 Q. When you were discussing, you know, the creation, the  
8 origins of this email, you said that Ms. Stulken got further  
9 clarification that the dress code had included Black Lives  
10 Matter messaging. Do you recall that testimony?

11 A. Yes.

12 Q. From whom did she get this further clarification?

13 A. From our regional team member services team.

14 Q. And I guess, the bottom of the email, the bottom of the  
15 first page, it says, you know, with our new uniform item or  
16 face mask, this has presented another item that does still  
17 need to comply with the dress code.

18 A. Correct.

19 Q. Was there confusion about that before June 25th?

20 A. I would say that prior to June 25th we were still trying  
21 to navigate the whole COVID thing and it was, it was just --  
22 she just wanted to clarify that yes, it did apply to masks as  
23 well.

24 Q. And part of that clarification came from regional  
25 management, you testified.

1 A. Correct.

2 Q. Were you part of those conversations?

3 A. No.

4 Q. Ms. Stulken related those conversations to you?

5 A. Yes.

6 Q. And was that around June 25th, do you recall?

7 A. Yeah, it was on June 25th.

8 Q. It was on June 25th, that day. And then going forward,  
9 there's -- the top of the page says double down and review  
10 the dress code with the team members. That was kind of --  
11 from June 25th on, it became a point of emphasis; is that --

12 A. Yes.

13 Q. -- fair to say? And part of the -- you know, as you  
14 said, you were navigating or working on navigating,  
15 obviously, COVID issues, new face mask policies. You had  
16 mentioned that you had instructed an employee to remove a  
17 grinning tooth graphic?

18 A. Correct.

19 Q. Were graphics like that part of the confusion or the  
20 things that you were trying to navigate that employees had  
21 been wearing up to June 25th?

22 A. Yes, that was why I prompted him to take it off, yes.

23 Q. You were also testifying about, you know, about  
24 discipline, about -- it sounds like no employees that you're  
25 aware of were disciplined formally for wearing Black Lives

1 Matter messaging in your store; is that correct?

2 A. Correct.

3 Q. And at least Ms. O'Neill, as you testified, she -- when  
4 she was told she needed to get in compliance if she wanted to  
5 continue working that day and she chose to go home, do you  
6 know if the same happened with Keeron or Francisco?

7 A. I know Cisco, on at least one occasion, decided to go  
8 home instead of being there.

9 Q. And you also testified about the instruction from  
10 regional leadership that you received in or around August  
11 when we were talking about the unions/union pin?

12 A. She wore the pin in August.

13 Q. Right, and -- yeah. So in connection with that  
14 testimony, you said that you had received instruction from  
15 regional leadership that union messaging was allowed?

16 A. Yeah.

17 Q. Was that before or after August 14th, if you recall?

18 A. It was before.

19 Q. It was before. You were aware -- talking about Cisco  
20 again, you were aware that your -- I guess Julius Wormley was  
21 a team leader; is that right?

22 A. He's an associate store team leader.

23 Q. So he was your counterpart --

24 A. Yes.

25 Q. -- at the time? You're aware that he had an hour-long

1 conversation with Cisco about the Black Lives Matter?

2 A. I know that they had a conversation. What the details  
3 of that conversation were, I couldn't say.

4 Q. He didn't talk to you about what the discussion --

5 A. No.

6 Q. -- entailed? Do you recall Julius, in connection with  
7 that discussion with Cisco, that Julius suggested that it was  
8 -- it would be a good idea to have a sit-down with anyone in  
9 the store that wanted to voice their minds and work on a  
10 compromise?

11 MR. BROWN: Objection. The witness just said he --

12 Q. BY MR. PETERSON: Yeah, I'm not asking about the  
13 conversation. I'm asking about what Julius reported to you.  
14 He reported to you that you [sic] had the hour-long  
15 conversation; is that correct?

16 A. Yes.

17 Q. And he also said, Julius suggested to you, to you and to  
18 Donna, that it's time to have a sit-down with anyone in the  
19 store that wanted to voice their minds and work on a  
20 compromise?

21 A. That's what he stated in the email, yes.

22 Q. And do you recall him also saying he felt that it's only  
23 the beginning and would like to nip it quickly?

24 A. That's what the email said.

25 Q. That's what the email said. The BLM, the Black Lives

1 Matter, issue is a sensitive subject obviously; is that fair  
2 to say?

3 A. Sure.

4 Q. Did people in your store leadership view it as in its  
5 own bubble?

6 A. Not particularly, no.

7 Q. Do you recall an email from Daniel Yacher saying that he  
8 knows that the BLM is a sensitive subject, and it's in its  
9 own bubble, but moving forward we should start holding her,  
10 referring to Justine, accountable with a written corrective  
11 action form?

12 A. I don't recall an email, but --

13 MR. PETERSON: I'm marking for identification as General  
14 Counsel's 77 an email exchange, August 14th to August 24th.

15 **(General Counsel's Exhibit 77 marked for identification.)**

16 MR. PETERSON: Go ahead and review that and let me know  
17 if you -- when you've had a chance and if you recognize it,  
18 okay?

19 THE WITNESS: Yes, I --

20 **(Phone rings.)**

21 MR. BROWN: Apologies.

22 Q. BY MR. PETERSON: The bottom email dated August 14th is  
23 from you to the team and that's, I believe, already in  
24 evidence as Respondent's 76.

25 A. Correct.



1 Q. But then above is a response from Daniel Yacher?

2 A. Yacher, yeah.

3 Q. Yacher? To -- yeah, to yourself, Lonnie Jones and  
4 Donna. And he says, "I know the BLM is a sensitive subject  
5 and it's in its own bubble, but moving forward we should  
6 start holding her accountable with a written corrective  
7 action for uniform." Do you see that?

8 A. Yes.

9 MR. BROWN: Before you answer that, I think you misread  
10 that. It was a question, not a statement. You read "we  
11 should" instead of "should we."

12 MR. PETERSON: I apologize. I did misread it. It does  
13 say "should we."

14 Q. BY MR. PETERSON: Does that refresh your recollection as  
15 to whether your store leadership believed that Black Lives  
16 Matter was in its own bubble?

17 A. I think it would depend on what you're calling a bubble.

18 Q. Well, I didn't call it a bubble. That's what  
19 Daniel Yacher said.

20 A. Danny called it a bubble, yes.

21 Q. And he's part of store leadership; is that right?

22 A. He's part of team leadership, yes.

23 Q. Team leadership. Okay, so does that refresh your  
24 recollection as to whether at least one individual in your  
25 store viewed it as its own bubble?

1 A. Yes.

2 MR. PETERSON: All right, move for the admission of  
3 General Counsel 77.

4 MR. BROWN: No objection.

5 JUDGE SOTOLONGO: General Counsel 77 is admitted.

6 **(General Counsel's Exhibit 77 received in evidence.)**

7 Q. BY MR. PETERSON: Do you know what he's referring to  
8 when he says its own bubble?

9 A. I am assuming that he's referring to the attendance  
10 policy and the buckets that we use for classifying attendance  
11 violations.

12 Q. And why do you assume that?

13 A. Because the first thing he said is this is counted as an  
14 absence.

15 Q. And was Black Lives Matter messaging being treated  
16 differently in your store than other types of dress code  
17 violations?

18 A. No, I wouldn't say so.

19 Q. Yeah. So what's the connection between corrective  
20 actions of any kind and the Black Lives Matter message?

21 A. Any time we would send a team member home for a dress  
22 code violation, we never counted it as an attendance piece.

23 Q. For other types of violations, did you count it as an  
24 attendance --

25 A. No.

1 Q. -- violation?

2 A. No, for any type, for ripped jeans or anything, never a  
3 violation.

4 MR. PETERSON: Thank you. I have no further questions.

5 **REDIRECT EXAMINATION**

6 Q. BY MR. BROWN: One follow-up question. Mr. Yacher asked  
7 whether Ms. O'Neill should be -- start to be held accountable  
8 with a written corrective action. Do you see that question?

9 A. I do, yes.

10 Q. Was she issued a corrective action?

11 A. No.

12 MR. BROWN: Just one quick second.

13 Q. BY MR. BROWN: Mr. Stegeman, you were asked by  
14 Mr. Peterson about your understanding of Black Lives Matter.  
15 Do you recall that?

16 A. Yes.

17 Q. Okay. And I believe you said, when I asked you what you  
18 understood it meant, that you said it related to police  
19 violence against and murder of people of color, some words to  
20 that effect; is that correct?

21 A. Correct.

22 Q. And then when you were asked again if you had a  
23 different understanding, you referenced systemic racism, or  
24 he referenced, counsel referenced systemic racism, and you  
25 agreed; is that correct?

1 A. Yeah.

2 Q. Okay. When did your understanding of the Black Lives  
3 Matter movement, from the summer of 2020 until now, change?

4 A. I would say that it's a progressive, a progressive  
5 change. Initially, it was -- in the summer of 2020 it was  
6 all about the murder of people by the police, and then I  
7 would say more so in the past year that I have come to  
8 understand broader issues that would fall under that  
9 umbrella.

10 MR. BROWN: No further questions.

11 JUDGE SOTOLONGO: Mr. Peterson?

12 MR. PETERSON: Yeah, just one follow-up.

13 **RECROSS-EXAMINATION**

14 Q. BY MR. PETERSON: Yeah. So you've come to understand,  
15 and I assume that's through further reading, news, perhaps  
16 entertainment, movies, television shows, you've grown to  
17 understand the broader meaning?

18 A. Yes.

19 Q. And that's when you became aware of the broader meaning;  
20 is that fair to say?

21 A. Yes, my own personal awareness.

22 MR. PETERSON: Okay, nothing further.

23 JUDGE SOTOLONGO: Very well. Mr. Stegeman, thank you  
24 very much for your testimony. You're excused. Please do not  
25 discuss your testimony with any other witness or potential

1 witness in this matter until the case is over. Thank you  
2 very much.

3 MR. BROWN: Thank you, sir.

4 **(Witness excused.)**

5 JUDGE SOTOLONGO: All right. Mr. Brown, does the  
6 Employer have any additional witnesses?

7 MR. BROWN: No, Your Honor.

8 JUDGE SOTOLONGO: For this portion of the case? For  
9 this portion of the case?

10 MR. BROWN: No, not this portion of the case.

11 JUDGE SOTOLONGO: All right. I guess that's -- perhaps  
12 before we go off the record, I just want to note we are  
13 scheduled to have a virtual or a Zoom hearing on the 26th and  
14 the 27th, and we're going to deal with the Chicago portion of  
15 the case. I'm going to make sure -- things got lost in the  
16 shuffle, but I want to make sure that by week's end we issue  
17 a notice of hearing of a Zoom hearing and the -- with a link  
18 and so forth and instructions. It's exactly the same as  
19 you've seen before, except it relates to the Chicago portion.

20 Mr. Peterson, do you anticipate -- just to get an idea,  
21 how many witnesses do you anticipate you're going to be  
22 calling in the Chicago portion of the case?

23 MR. PETERSON: Just one, Your Honor.

24 JUDGE SOTOLONGO: All right. So I assume you're going  
25 to -- so I assume you can probably do it on one day, the

1 26th? Very well.

2 MS. SCHAEFER: Are we going to start Pacific time? Are  
3 we going to start Pacific time as well, again?

4 JUDGE SOTOLONGO: Yeah, so that -- yeah. Yeah, I  
5 can't -- yeah.

6 MS. SCHAEFER: That's fine. I just wanted to clarify.

7 JUDGE SOTOLONGO: Yeah, it's going to be -- it's going  
8 to be 11 o'clock Chicago time and 12 o'clock East Coast time,  
9 so -- all right, yeah, we're going to start --

10 MR. BROWN: That's fine, Your Honor.

11 MS. SCHAEFER: That's fine.

12 JUDGE SOTOLONGO: -- and see how far we can get. I'm  
13 willing to go late. If not, we'll just resume the next day.  
14 All right, thank you very much, and that's a wrap for the  
15 Washington, D.C. portion. The hearing, the record is closed.

16 **(Whereupon, at 2:15 p.m., the hearing in the above-entitled**  
17 **matter was adjourned, to resume July 26, 2022.)**

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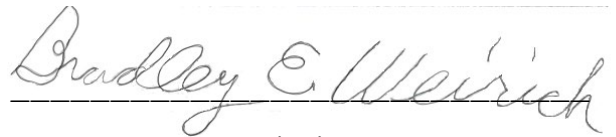
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24

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**CERTIFICATION**

1  
2       This is to certify that the attached proceedings before  
3 the National Labor Relations Board (NLRB), in the matter of  
4 **WHOLE FOODS MARKET SERVICES, INC.,** Case No. **01-CA-263079,**  
5 **et al.,** at Washington, D.C., on **July 20, 2022,** was held  
6 according to the record, and that this is the original,  
7 complete, and true and accurate transcript that has been  
8 compared to the recording, at the hearing, that the exhibits  
9 are complete and no exhibits received in evidence or in the  
10 rejected exhibit files are missing.

11  
12  
13  
14  
15       

16       Bradley E. Weirich

17       Official Reporter  
18  
19  
20  
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24  
25

OFFICIAL REPORT OF PROCEEDINGS  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 20

In the Matter of:

Whole Foods Market Services, Inc.,	Case Nos.	01-CA-263079
		01-CA-263108
		01-CA-264917
Employer,		01-CA-265183
		01-CA-266440
and		01-CA-273840
		04-CA-262738
Savannah Lynn Kinzer, Suverino		04-CA-263142
Frith, Lyla Styles,		04-CA-264240
Abdulai Barry, Kirby Burt,		04-CA-264841
Kaeleb Candrill, Leea Mary		05-CA-264906
Kelly, Truman Read, Haley		05-CA-266403
Evans, Justine O'Neill, Jolina		10-CA-264875
Christie, Sarita Wilson,		19-CA-263263
Camille Tucker-Tolbert, Cassidy		20-CA-264834
Visco, Yuri London, Ana Belen		25-CA-264904
Del Rio Ramirez, And		32-CA-263226
Christopher Michno, As		32-CA-266442
Individuals,		

Charging Party.

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Place: San Francisco, CA (via Zoom Videoconference)

Dates: July 26, 2022

Pages: 2471 through 2607

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**UNITED STATES OF AMERICA**  
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**  
**REGION 20**

In the Matter of:

WHOLE FOODS MARKET SERVICES,  
 INC.,

Employer,

and

SAVANNAH LYNN KINZER, SUVERINO  
 FRITH, Lyla STYLES,  
 ABDULAI BARRY, KIRBY BURT,  
 KAELEB CANDRILL, LEEA MARY  
 KELLY,  
 TRUMAN READ, HALEY EVANS,  
 JUSTINE O'NEILL, JOLINA  
 CHRISTIE,  
 SARITA WILSON, CAMILLE TUCKER-  
 TOLBERT, CASSIDY VISCO,  
 YURI LONDON, ANA BELEN DEL RIO  
 RAMIREZ, AND CHRISTOPHER  
 MICHNO,  
 AS INDIVIDUALS,

Charging Party.

Case Nos.	01-CA-263079
	01-CA-263108
	01-CA-264917
	01-CA-265183
	01-CA-266440
	01-CA-273840
	04-CA-262738
	04-CA-263142
	04-CA-264240
	04-CA-264841
	05-CA-264906
	05-CA-266403
	10-CA-264875
	19-CA-263263
	20-CA-264834
	25-CA-264904
	32-CA-263226
	32-CA-266442

The above-entitled matter came on for hearing, via Zoom  
 videoconference, pursuant to notice, before **ARIEL SOTOLONGO**,  
 Administrative Law Judge, at the National Labor Relations  
 Board, Region 20, 901 Market Street, Suite 400, San Francisco,  
 CA 94103, on **Tuesday, July 26, 2022, 9:03 a.m.**



A P P E A R A N C E S

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Yuri London	2476	2519	2550,2561	2558	2514
Jill Smith	2564,2584,2592	2597			
2584,2591					

E X H I B I T SEXHIBITIDENTIFIEDIN EVIDENCE**General Counsel:**

GC-78

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**Employer:**

E-78

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**Respondent:**

R-79

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1                                    P R O C E E D I N G S

2                    JUDGE SOTOLONGO:    Good morning.    This is Judge Ariel  
3    Sotolongo.    It is now Tuesday, July 26th.    This is the  
4    continuation of our hearing in the Whole Foods case as  
5    previous -- previously agreed upon.

6                    Today we are conducting the Chicago -- or it should be an  
7    Indiana portion, I guess, of the hearing since the -- the store  
8    was technically in Indiana, but in any event, I guess what's  
9    near the Chicago metropolitan area.    We're conducting this via  
10   Zoom pursuant to prior agreement.

11                  Mr. Peterson, are you ready to call your -- your first  
12   witness?

13                  MR. PETERSON:    Yes, Your Honor.

14                  JUDGE SOTOLONGO:    All right.    Go ahead.

15                  MR. PETERSON:    Yeah.    The General Counsel calls Yuri  
16   London.

17                  JUDGE SOTOLONGO:    All right.    Ms. London, would you please  
18   raise your right hand?  
19   Whereupon,

20                                    YURI LONDON

21    having been duly sworn, was called as a witness herein and was  
22   examined and testified as follows:

23                  THE WITNESS:    Yes.

24                  JUDGE SOTOLONGO:    Thank you.    Please spell your name for  
25   us and give us your address.



1 THE WITNESS: Y-U-R-I L-O-N-D-O-N, 300 East LaSalle  
2 Avenue, South Bend, Indiana 465 -- or no. 46617.

3 JUDGE SOTOLONGO: All right. Thank you very much.

4 Please proceed, Mr. Peterson.

5 MR. PETERSON: Thank you, Your Honor.

6 **DIRECT EXAMINATION**

7 Q BY MR. PETERSON: Good morning, Ms. London.

8 A Good morning.

9 Q As you know, I'm Matt Peterson. I'm the attorney for the  
10 National Labor Relations Board. We're all going to have some  
11 questions for you today. Listen carefully. Answer truthfully.  
12 If you don't understand a question, let us know, and we can --  
13 we can rephrase it in a different way. And give a little pause  
14 before answering so that the attorneys can make any objections  
15 if necessary, and then the judge will let you know whether you  
16 can answer or -- or not.

17 Q Does that make sense?

18 A Yes.

19 Q Okay. First of all, do you have any preferred pronouns?

20 A She/her is fine.

21 Q Is Ms. London okay?

22 A Yes.

23 Q Ms. London, are you familiar with the company called Whole  
24 Foods?

25 A Yes.



1 Q And how are you familiar with Whole Foods?

2 A I used to work there.

3 Q Over what time period did you work at Whole Foods?

4 A I worked at Whole Foods from 2018 to 2020.

5 Q Do you remember what month you stopped working there in  
6 2020?

7 A November?

8 Q Did work at a particular Whole Foods location throughout  
9 your employment there?

10 A Yes. I worked at the Whole Foods location in South Bend,  
11 Mishawaka, Indiana.

12 Q Did you work in more than one position while you were  
13 working at Whole Foods?

14 A I was a cashier, but I had, like, different jobs within  
15 being a cashier.

16 Q Can you give us a general description of your job duties?

17 A I was to, like, ring out customers, process their  
18 transactions, bag their groceries. I occasionally worked the  
19 holiday table where you take their, like, holiday Christmas  
20 orders for, like, catering, and then I also occasionally was,  
21 like, a greeter in the front of the store where you greet  
22 customers.

23 Q In -- during -- during your -- during -- so this case a  
24 lot is going to be focused on the summer of 2020.

25 A Um-hum.

1 Q Were you -- what was your -- what your work schedule like  
2 in the summer of 2020?

3 A My work schedule was, I worked from 5 p.m. to 9 p.m. as a  
4 closer about three to four days a week.

5 Q And can you de -- describe the -- the management structure  
6 at the Whole Foods you were working at during the summer of  
7 2020? Who did you report to, and who did they report to?

8 A I reported to a supervisor who reported to a team leader  
9 who reported to an assistant team leader -- or store team  
10 leader who reported to a store team leader.

11 Q All right. Do you -- can you identify the -- the names of  
12 those individuals during -- during the -- from the summer of  
13 2020?

14 A Yeah. My supervisors were Melissa (phonetic throughout),  
15 Madison (phonetic throughout), Jasmine (phonetic throughout).  
16 And then my team leaders were Eder Nunez (phonetic throughout)  
17 and Melissa (phonetic throughout). And then the assistant  
18 store team leaders were Andrew (phonetic throughout) and Steve  
19 (phonetic throughout). And the store team leader was Seth  
20 (phonetic throughout).

21 Q Now, do you know any of their last names?

22 A I don't remember all of them.

23 Q Do you remember some of them?

24 A I remember my team leader Eder Nunez, and the other team  
25 leader was Melissa Hicks. And then the store team leaders, I



1 don't remember their last name. And then I remember the main  
2 store team leader was Seth Carlson.

3 Q Okay. Are -- are you familiar with the term Black Lives  
4 Matter?

5 A Yes.

6 Q And how are you familiar with the term Black Lives Matter?

7 A I'm familiar with term Black Lives Matter because I  
8 remember seeing just a couple years ago people were using Black  
9 Lives Matter as a form or organization against police  
10 brutality.

11 Q And what is -- and how did you -- is that through news  
12 media or other -- other sources?

13 A The internet.

14 Q And what is your understanding of what the phrase Black  
15 Lives Matter means?

16 A To my understanding, Black Lives Matter means really just  
17 making sure that there is a equality between black people and  
18 nonblack people.

19 Q And equality in any particular institutions or -- or -- or  
20 arenas?

21 A Equality in, say, like, schools, and in the workplace, and  
22 just really, like, in, I suppose, just in life in general.

23 Q Did you ever wear the phrase Black Lives Matter at work?

24 A Yes.

25 Q How many times?

1 A Once.

2 MR. PETERSON: Your Honor, may I share an exhibit?

3 JUDGE SOTOLONGO: Sure. Absolutely.

4 MR. PETERSON: Okay. I have what's marked for  
5 identification as General Counsel 78. I'll put it in the chat,  
6 and I will also share the screen.

7 Q BY MR. PETERSON: Ms. London, are you able to access  
8 the -- the chat?

9 A Yes.

10 Q And let me know if you -- if you've had a chance to open  
11 the file.

12 A Yes.

13 MR. PETERSON: Okay. Okay. Your Honor, if I may -- may  
14 share my screen?

15 JUDGE SOTOLONGO: Please do.

16 Q BY MR. PETERSON: Ms. London, do you -- do you recognize  
17 the image that's depicted from that exhibit?

18 A Yes.

19 Q Can you tell us what it is?

20 A This is a Instagram story post of me wearing a Black Lives  
21 Matter face mask to work.

22 Q Is that a post that you posted yourself?

23 A Yes.

24 Q Did you take that picture yourself?

25 A Yes.

1 Q The date indicates June 9th, 2020. Did you take that --  
2 take that photo or post around June 9th, 2020?

3 A Yes, I did.

4 Q And is that the -- the phrase, Black Lives Matter, that  
5 you wore to work on one occasion?

6 A Yes.

7 Q Okay. I'm going to stop sharing the screen. What --  
8 what -- what -- what gave you the idea to wear that Black Lives  
9 Matter mask to work?

10 A I chose to wear the Black Lives Matter mask to work  
11 because of, like, feeling a little bit uncomfortable in, like,  
12 my work place.

13 Q And what was -- why -- why were you uncomfortable in your  
14 work place?

15 A At the time, I was -- you know, I was having, like, issues  
16 with racist customers, and George Floyd and Breonna Taylor were  
17 also murdered at that time.

18 Q Who were you hoping would see the Black Lives Matter mask  
19 that you were wearing at work?

20 A Really anyone that, I guess, was looking at me.

21 Q And what were you -- what were you hoping to accomplish by  
22 wearing the Black Lives Matter mask at work?

23 A A conversation.

24 Q And can you provide a little more detail?

25 A Yeah. I just wanted to have a conversation with people as

1 to, like, how we all, like, just sort of in a society can  
2 collectively make black people feel like there is actually  
3 equality within, like, the work place and in schools.

4 Q Had you spoken with any of your coworkers about the ma --  
5 mask before you wore it to work?

6 A Yes.

7 Q And do you remember when you wore it to work?

8 A I wore it on June 9th.

9 Q And when did you -- when did you speak with your coworkers  
10 about wearing the Black Lives Matter mask in relation to June  
11 9th?

12 A I spoke with my coworkers on June 8th about wearing the  
13 Black Lives Matter face mask.

14 Q And you don't need to identify those coworkers by name,  
15 but where -- where did those conversations take place?

16 A They took place near, like, the cash register in the Whole  
17 Foods store.

18 Q And was this more than one conversation or -- or a single  
19 conversation?

20 A This was more than one conversation.

21 Q How many conversations did you have?

22 A Three.

23 Q And these were all on June -- on -- on June 8th?

24 A Yes.

25 Q And how many -- were they -- were they conversations with

1 individuals or were they with more than one employee at a time?

2 A This was just individuals.

3 Q And can you recall who said -- who said what in the first  
4 conversation?

5 A In the first conversation, the person that I spoke to told  
6 me that they were just, sort of, worried that I would get in  
7 trouble for wearing the face mask.

8 Q And did you respond?

9 JUDGE SOTOLONGO: Excuse me. Ms. London, people  
10 against -- this person that you were talking to, was that a  
11 fellow employee or -- or a customer? Who was this person?

12 THE WITNESS: This was a fellow employee.

13 JUDGE SOTOLONGO: Okay. All right.

14 Go ahead.

15 A When speaking to, like, a fellow team member, I just told  
16 them that I had a Black Lives Matter face mask coming in the  
17 mail and that I was going to wear it to work. And they asked,  
18 like, well, are you worried that you're going to in trouble, or  
19 you know, I just don't want you to get in trouble. And I told  
20 them that I wasn't really worried about getting in trouble  
21 because, you know, it just says Black Lives Matter on it. I'm  
22 not wearing something, like, sensitive, inflammatory, and you  
23 know, as, like -- even, like, as a queer team member, like, you  
24 know, we have pride lanyards, pride pins. We have pride --  
25 like, you know, there's pride hats that come with Whole Foods

1 branding on them. So I figured that it wouldn't have been that  
2 big of a deal for me to wear.

3 JUDGE SOTOLONGO: Can you -- can you provide a little  
4 background, Ms. London? Where did this conversation take  
5 place? Was it in -- in the work place? Was it in the store?  
6 Was it on the phone? Was it online? If you could give us a  
7 little background on that.

8 THE WITNESS: Yes. This conversation took place in the  
9 Whole Foods store where -- like, near the cash registers where  
10 we just, sort of, stand out to wait for customers to check out.

11 JUDGE SOTOLONGO: Okay. And you were wearing a mask at  
12 the time?

13 THE WITNESS: I wasn't wearing the Black Lives Matter face  
14 mask when this conversation was happening.

15 JUDGE SOTOLONGO: You -- you were not.

16 THE WITNESS: No.

17 JUDGE SOTOLONGO: Okay. How does the employee know that  
18 you plan to -- to wear the mask?

19 THE WITNESS: I had planned to wear the mask because I was  
20 wearing a pin with my name on the nametag pin along with George  
21 Floyd's name on the nametag pin.

22 JUDGE SOTOLONGO: Okay. So -- all right. So the co --  
23 the conversation you had with the employee was not about the  
24 mask, but it was about the pin that you had?

25 THE WITNESS: It was about the face mask.

1 JUDGE SOTOLONGO: Okay. But you were not wearing the face  
2 mask at the time?

3 THE WITNESS: No.

4 JUDGE SOTOLONGO: Okay. So --

5 MR. PETERSON: Your Honor, you -- you -- you may have  
6 missed, she -- she -- so she did give some -- some -- some  
7 background earlier that these conversations took place in the  
8 work place, and then --

9 JUDGE SOTOLONGO: All right.

10 MR. PETERSON: -- you -- she had told the --

11 JUDGE SOTOLONGO: I apol -- Yeah. I apologize. So I -- I  
12 missed that. Sorry. Go ahead.

13 Q BY MR. PETERSON: Yeah. So ju -- Ms. London, if you can  
14 just repeat wha -- how the topic of the face mask came up.

15 A Okay. The topic of the face mask came up because I was  
16 wearing a nametag pin that had my name along with George  
17 Floyd's name on it, and in wearing that pin, I had to have a  
18 conversation with store leadership. So I had to have a  
19 conversation with Seth about the nametag pin because it was out  
20 of dress code, and --

21 Q Okay. We'll get -- yeah. We'll get -- we'll get to that,  
22 but I think earlier, did you -- am I correct that you testified  
23 that you had told the employee that you had ordered a Black  
24 Lives Matter mask in the mail?

25 A Yes. Correct.

1 Q Okay. And that's what you testified earlier?

2 A Yes.

3 MR. PETERSON: Okay. Okay. And so this -- yeah. So Your  
4 Honor, you missed that part. That was how the -- that was how  
5 the Black Lives Matter mask came up before -- this was before  
6 she actually wore it to work.

7 JUDGE SOTOLONGO: All right. Thank you. I -- I had  
8 somehow not heard that, or missed, or -- or not -- not -- it  
9 wasn't clear in my mind. Thank you very much.

10 Q BY MR. PETERSON: Okay. And then you -- you said you had  
11 two more conversations with different coworkers at -- at work  
12 on June 8th or June 9th. Do you recall the second  
13 conversation?

14 A Yes. On June 8th, I spoke with another cashier in the  
15 front of the store where the registers are in Whole Foods. I  
16 spoke with another team member on June 8th, and they were  
17 asking, maybe, if they should start wearing a Black Lives  
18 Matter pin or maybe they should start wearing, like, a Black  
19 Lives Matter bracelet to make me feel supported.

20 Q Anything else that you recall about that conversation?

21 A No.

22 Q And then you mentioned you had a -- a third conversation  
23 with a -- with a coworker before you had -- before you had  
24 actually worn the mask on June 9th. Do you recall when that  
25 was?



1     A     This conversation was on June 8th, and it also took place  
2     in the Whole Foods store where the cash registers are. And  
3     they said something similar the first conversation where  
4     they -- they were just worried, and that they didn't want me to  
5     get in trouble, and that they supported me.

6     Q     And how did the -- how did the Black Lives Matter mask  
7     come up in that conversation?

8     A     The Black Lives Matter mask came up because of the pin  
9     that I was wearing, and they noticed that I wasn't wearing it  
10    anymore.

11    Q     Okay. Apart from your conversation with employees  
12    about -- about wearing the Black Lives Matter mask, prior to  
13    June 9th had you seen any other employees or manager in your  
14    store wearing masks, buttons, or pins with -- with other  
15    messages on them?

16    A     Yes, I did.

17    Q     Can you provide some examples?

18    A     I saw a team member with a mask. She was also a cashier  
19    in the Whole Foods store. She was wearing a face mask that  
20    said her name, which was Cynthia (phonetic throughout) on the  
21    front of it.

22    Q     And any other examples?

23    A     I also saw our store team leader, Seth. He wore a face  
24    mask that said, like, I love South Bend on it.

25    Q     And when was this in relation to June 9th?

1 A These were before June 9th.

2 Q And were they just one -- one -- one occurrence, or were  
3 they wearing these masks that you described on a regular basis?

4 A They wore them on a regular basis.

5 Q And can you estimate over what -- what time period prior  
6 to June 9th?

7 A About a couple of weeks, maybe, like a week or two is --  
8 from when I saw them because I didn't work with them every day.

9 Q And you've kind of alluded to this earlier, but prior to  
10 June 9th, had you worn any messages personally on any buttons,  
11 pins, or masks prior to wearing Black Lives Matter on your  
12 mask?

13 A Yes.

14 Q And what did -- what -- what did you wear?

15 A I wore the name George Floyd and the name Breonna Taylor.

16 Q And when was --

17 JUDGE SOTOLONGO: Was there -- was there -- excuse me.  
18 Was it the same pin that had both your name and George Floyd's  
19 name, or was it two separate pins next to each other? Could  
20 you describe that a little better?

21 THE WITNESS: Yes. The nametag was circular pin that I  
22 had my name in the middle, and then above my name, I was able  
23 to write the name George Floyd. And then I chose to erase it  
24 and write Breonna Taylor.

25 JUDGE SOTOLONGO: Oh, so --

1 THE WITNESS: On my --

2 JUDGE SOTOLONGO: -- all right. So you -- okay. So you  
3 had enough space to actually write the name of Breonna Taylor  
4 or George Floyd in the -- in the -- your nametag pin. Is  
5 that -- did I understand that correctly?

6 THE WITNESS: Yes.

7 JUDGE SOTOLONGO: Okay. Like, with a -- with a -- with a  
8 Sharpie or something like that that you wrote it?

9 THE WITNESS: Yes. With, like, a dry erase marker.

10 JUDGE SOTOLONGO: Okay. Thank you. I guess, just to  
11 clarify. Thank you.

12 Q BY MR. PETERSON: And when -- when did you -- when did you  
13 wear those in relation to June 9th, those -- those modified  
14 name buttons that you described?

15 A I wore the buttons June 8th and June 7th.

16 Q And did an -- did any -- do you have any conversations  
17 with management on June 7th or June 8th about the buttons that  
18 you were wearing that had either George Floyd or Breonna  
19 Taylor's names in addition to your own?

20 A I had a conversation with management on June 8th.

21 Q And where did that conversation take place?

22 A This conversation took place in, like, the store team  
23 leader office.

24 Q And who was present for that conversation?

25 A Seth Carlson and there was another, like, team leader

1 from, like, a different department, but I don't remember her  
2 name.

3 Q And how did the -- the -- how did the topic of your -- of  
4 your nametag buttons come up?

5 A The topic just sort of came up because while I was  
6 working, my team supervisor just sort of told me that Seth  
7 wanted to talk to me about something. And I was told to go to  
8 the office.

9 Q And -- and then how did the -- how did the meeting begin  
10 with -- with -- with Seth Carlson?

11 A From what I recall, he just started asking me how I was  
12 doing.

13 Q And can you do your best to try and think of yourself as a  
14 human tape recorder, and -- and walk us through what you recall  
15 about that conversation? Who said what?

16 A Yes. I walked into Seth's office, and I -- he told me to  
17 have a seat. And I -- he told me that there was, like, another  
18 store team leader who was a woman in the room there for,  
19 like -- just so, like -- you know, so I would feel safe just  
20 because that's how it was supposed to be when there was another  
21 male in the room with a woman.

22 And asked me how I was doing, and then I told him that I  
23 was doing fine. And then he asked me if I, like, needed  
24 anything, like -- like, store-wise, and I said no. And he  
25 then, sort of, just went straight to talking about the pin, and

1 he asked me why I had George Floyd's name on my pin. And I  
2 explained that his murder had really, like, been weighing heavy  
3 on me at the time, and I felt that as a black woman, this was  
4 my way of showing support and protest.

5 And he told me that he understood that, like, it was my  
6 way of showing support and protest, and that he was listening  
7 to how I felt about it. And he then -- he told me that while  
8 he, you know, supports Black Lives Matter, and he supports me,  
9 I can't have someone else's name on my nametag. And I -- you  
10 know, I just started to ask why, and Seth said that it was a  
11 part of our dress code policy, and that we cannot wear someone  
12 else's name on our nametag.

13 And I said that I understood and that, you know, that made  
14 sense, but this is, like, my form of protest, and you know,  
15 as -- you know, there is no, like, Black Lives Matter, like,  
16 Whole Foods branded anything and there are pride lanyards that  
17 we could have, and pride pins, and pride hats that we could buy  
18 to wear with our uniform. You know, there's nothing that was,  
19 like, really given for me for an option for this, so you know,  
20 this was what I wanted to wear.

21 And he, sort of, like, paused and said that, you know, he  
22 understood, and that he wanted to take some time to think about  
23 what I said.

24 Q Anything else that you recall about that conversation?

25 A No.

1 Q What did you -- what did you do with your -- the -- the  
2 pin that you were wearing during or -- or after that  
3 conversation?

4 A I refused to take it off.

5 Q And did you con -- did you continue working?

6 A No. I left.

7 Q Did you have time left in your shift?

8 A No. I clocked out and I left.

9 Q Was that -- was that conversation at the end of your  
10 shift, then?

11 A I don't recall.

12 JUDGE SOTOLONGO: Oh, oh, Ms. -- Ms. London, what was the  
13 name of the supervisor again?

14 THE WITNESS: This was the store team leader, Seth  
15 Carlson.

16 JUDGE SOTOLONGO: Mr. Carlson -- okay. Thank you.

17 Q BY MR. PETERSON: Okay. And then, so that was June 8th.  
18 And then June 9th was the -- the first day that you testified  
19 that you wore the -- the Black Lives Matter mask that we saw in  
20 the General Counsel 78? Is that correct?

21 A Yes.

22 Q Would you -- did -- did you wear the -- did you wear the  
23 pin -- the George Floyd pin that you were describing on June  
24 9th?

25 A Yes.

1 Q And did you have any conversations with management about  
2 what you were wearing on -- on June 9th?

3 A Yes.

4 Q And when -- when did tha -- when did that conversation  
5 take place in re -- in relation to your shift start time?

6 A I remember walking into work, and -- to go into the time  
7 clock to punch in, and then going back out to grab my apron and  
8 my name tag, and then going out to the cashiers. And I was  
9 probably standing there for about 15 minutes, and then I was  
10 told to go to the back of the store to talk to Seth.

11 MR. PETERSON: Okay. I just want to back up for a quick  
12 second.

13 Your Honor, may I share the screen again, General Counsel  
14 78?

15 JUDGE SOTOLONGO: Yes. Go -- go ahead.

16 Q BY MR. PETERSON: Ms. London, can you see the -- can you  
17 see the exhibit there?

18 A Yes.

19 Q And you said this was an enneagram -- a Instagram post  
20 that made --

21 A Yes.

22 Q On June 9th? It says 4:43 p.m. Is that about the time  
23 you posted it?

24 A Yes.

25 Q Was that before or after the start of your shift?

1 A This is before the start of my shift.

2 Q And I see there's a comment there that says, let's see if  
3 this is a dress code infraction. Do you see that?

4 A Yes.

5 Q Do you know who posted that?

6 A I did.

7 Q And what was your -- what -- why did you -- why did you  
8 write that message on the -- on the post?

9 A I wrote that message because I genuinely just wanted to  
10 see if it would be a dress code infraction.

11 Q And was -- after your -- your conversation about the  
12 nametags, did you have -- did you believe that wearing the  
13 Black Lives Matter mask was something different?

14 A I did believe that it was something different because he  
15 told me since I couldn't wear someone else's name on my  
16 nametag, I thought that being more direct with my message would  
17 probably be better, and I was wearing a face mask, so I  
18 wasn't -- I didn't think I was going against dress code.

19 Q Okay. And you said you were still wearing the -- the --  
20 the button or the pin that -- that you were told you couldn't  
21 wear?

22 A Yes.

23 MR. PETERSON: Okay. Okay. Move for the admission of  
24 General Counsel 78.

25 JUDGE SOTOLONGO: All right. Any voir dire or any



1 objections?

2 MR. FERRELL: No -- no objection to 78.

3 JUDGE SOTOLONGO: All right. General Counsel 78 is -- is  
4 admitted.

5 **(General Counsel Exhibit Number 78 Received into Evidence).**

6 Q BY MR. PETERSON: Okay. So now, going back to the --  
7 your -- your meeting you were about to describe. So you said  
8 you were -- you were waiting for 15 minutes or so. What  
9 happened next?

10 A I was finished ringing out a customer, and my supervisor  
11 told me that Seth wanted to talk to me in the office, and so I  
12 go back to the office.

13 JUDGE SOTOLONGO: Just -- just to clarify, Ms. London.  
14 Just to make sure we are all on the same page, the photo that  
15 is shown in General Counsel 78, the one that -- where you're  
16 wearing the mask -- the Black Lives Matter mask, and then that  
17 tee shirt -- where -- with that message or in closer. So let's  
18 see if this is a dress code infraction. That is something --  
19 the -- the part that says let's see if this is a dress code  
20 infraction, something you posted on Instagram; is that correct?

21 THE WITNESS: Correct.

22 JUDGE SOTOLONGO: So you were not wearing this tee shirt  
23 with that message while you were at work; is that correct?

24 THE WITNESS: No. It was on the image. I put it on  
25 top --

1 JUDGE SOTOLONGO: I -- I see. Just to clarify. All  
2 right. So I asked earlier, have you also at work you wear --  
3 you wear an apron. That be correct?

4 THE WITNESS: Correct.

5 JUDGE SOTOLONGO: So an apron pretty much covered your tee  
6 shirt, in any event, correct?

7 THE WITNESS: Correct.

8 JUDGE SOTOLONGO: Okay. Okay. Go ahead. Just to clarify  
9 that.

10 Q BY MR. PETERSON: In -- about how long did this meeting --  
11 you said Seth Carlson was present. Anyone else present?

12 A There was another woman in the room who was a team leader,  
13 but I don't quite remember her name.

14 Q And can you -- as -- as you did before, do your best to,  
15 kind of, walk us through that conversation. Who did it  
16 begin -- how did it begin, and who said what?

17 A Okay. So I walk into the team leader office, and Seth  
18 asked me to take a seat, and so I sit down. And he asked  
19 again, how am I doing? How am I feeling? And I just let him  
20 know that I'm doing fine. I'm okay. And tells me that he took  
21 time to think about what I had to say yesterday -- or the -- on  
22 June 8th, and explained that he, as a, like, white, queer man  
23 will never understand what it's like to be black, and that they  
24 don't equate to the same thing.

25 So you know, he understands that, like, while I was trying

1 to support Black Lives Matter, I was going about it the wrong  
2 way, and that I -- that -- that he -- he wanted to take time to  
3 think about what I had to say because he didn't just want to,  
4 like, react. He wanted to take time to think about what I had  
5 to say. And he said that he -- he apologized for making me  
6 feel like I was disrespected. And he told me that still  
7 wearing the nametag pin was still, like, out of dress code.

8 And so I -- I couldn't wear the nametag, and that he also  
9 told me that I couldn't wear the Black Lives Matter face mask  
10 because it had writing on it, and that that was also against  
11 dress code.

12 Q Anything else you recall about that conversation?

13 A No.

14 Q Do you recall if there was any -- any discussion about  
15 being able to wear either item on -- on your break?

16 A Oh, he did tell me that I could wear my face mask off the  
17 clock, which would be, like, my lunch breaks and like, going  
18 out to my car. And he told me that I could just, like, wear  
19 them on my lunch break, but I couldn't wear it while on the  
20 clock.

21 JUDGE SOTOLONGO: And do you -- do you take your lunch  
22 break in a -- like, in a lunch room that is out of sight of  
23 customers, or -- or do you take lunch breaks right in -- you  
24 know, in the store somewhere?

25 THE WITNESS: You can take your lunch break out in the

1      café area --

2            JUDGE SOTOLONGO:    Okay.

3            THE WITNESS:    --    or in the break room.

4            JUDGE SOTOLONGO:    I see.    Okay.    And when you're on break,  
5    let's say you were having lunch on the -- in the -- did you  
6    have lu -- break on the -- in the -- in the café area?

7            THE WITNESS:    I would have break in the café area or in  
8    the break room.

9            JUDGE SOTOLONGO:    I see.    And when you were doing that,  
10    were you wearing your apron and -- and -- or were you  
11    contacting your -- you know, in other words, would -- would  
12    people know you were a store employee if you were taking your  
13    break on -- on -- on the café area?

14           THE WITNESS:    No.

15           JUDGE SOTOLONGO:    So you would -- you would take your  
16    apron off?

17           THE WITNESS:    Yes.

18           JUDGE SOTOLONGO:    I see.    Okay.    So all right.    So then  
19    you saying that basically that -- essentially that you could  
20    wear the mask and pin while you were off duty, during breaks or  
21    otherwise, but that when you were on the clock working, you  
22    could not wear those; is that correct?

23           THE WITNESS:    Correct.

24           JUDGE SOTOLONGO:    All right.    Thank you.    Thank you for  
25    the clarification.

1 Q BY MR. PETERSON: Do you recall if -- do you recall having  
2 any discussion -- any further discussion about the -- the gay  
3 pride -- the gay pride messages that were -- were at Whole  
4 Foods?

5 A Yes. During the conversation with Seth in the team leader  
6 office, I explained that we are allowed to have, like, Whole  
7 Foods branded hats that are for pride month. We're allowed to  
8 have lanyards that are for pride month. We're allowed to have  
9 pins. You know, there are even, like, flags around the store,  
10 but I wasn't allowed to wear Black Lives Matter when I'm trying  
11 to support a community?

12 Q And did he have any reaction to your comparison between  
13 the Black Lives Matter messages and the -- and the gay pride  
14 message?

15 A He explained that he understood, and that he stood with  
16 Black Lives Matter, and that he flew a Black Lives Matter fl --  
17 flag at his house, but in his position, he told me that I  
18 wasn't allowed to wear the face mask.

19 Q Was -- was Mr. Carlson wearing any -- any -- any type of  
20 messaging during that conversation?

21 A He took his lanyard off that had the pride flag on it.

22 Q Did he tell you why he was doing that?

23 A He said that he took it off to, sort of, stand in  
24 solidarity with me because he wasn't allowed -- because he felt  
25 that, like, since there was nothing I could wear for Black

1     Lives Matter, he felt he shouldn't wear the pride lanyard.

2     Q     And did he give any indication as to whether he was going  
3     to speak to anyone else about the issue?

4     A     He did. He said that he had spoke to higher-ups, like,  
5     within Whole Foods and that he had been emailing with them to  
6     talk about this situation, and what could be done, and what --  
7     if there was any, like, room for anything to be done.

8     Q     And did you -- what did -- what did you do at the end of  
9     the meeting?

10    A     I took my face mask off.

11    Q     Did you replace it with a different face mask?

12    A     Yes.

13    Q     And what about the -- the pin or button you were wearing?

14    A     I don't remember doing anything with the pin.

15    Q     Do you remember if you continued to work the rest of your  
16    shift?

17    A     I worked the rest of my shift.

18    Q     After that, did you have subsequent conversations with  
19    management about wearing the Black Lives Matter mask or the  
20    pins?

21    A     He told me that -- or Seth told me that I could wear a  
22    bracelet that says Black Lives Matter on it. And -- and he  
23    said I just -- I couldn't wear the face mask, and that was all  
24    that he said.

25    Q     Did you wear -- do you recall if you wore the -- the face

1 mask again to work?

2 A I did not.

3 Q What about the -- the -- the pin or button you were

4 describing?

5 A I wore the pin again.

6 Q And do you recall when that was?

7 A No.

8 Q Do you recall if you took a leave -- a leave of absence

9 from work for a while around August?

10 A I did take a leave of absence.

11 Q Do you recall if you wore the -- the pin again before or

12 after you took the leave of absence?

13 A I wore the pin after my leave of absence because I forgot

14 to, like, wipe it off when I came back from my leave of

15 absence.

16 Q So this -- so the -- the nametag was the same as -- as you

17 had described earlier?

18 A This time I had instead of George Floyd's name, I had

19 Breonna Taylor's name.

20 Q And did -- after your return from the -- the leave of

21 absence, did -- did -- did you have any conversations with

22 management about wearing the -- the nametag with Breonna

23 Taylor's name on it?

24 A Yes. I was told to speak with Seth again about the

25 nametag.

1 Q And whe -- where did that conversation take place?

2 A We talked in the store team leader office.

3 Q And was anyone else present?

4 A There was another woman present, but I don't remember her  
5 name.

6 Q And can you do this again -- do -- as you described  
7 earlier. Who -- how did the conversation begin and who said  
8 what to the best you can recall?

9 A Yes. I walked into the team leader office, and Seth asked  
10 once again how I was doing and if I needed anything after,  
11 like, being on a leave of absence and then just coming back to  
12 work. And I explained that I was doing the best that I could,  
13 and he asked if I -- like, why I was wearing the nametag again.  
14 And I explained that this was just something that, like, I felt  
15 to do. I felt that I should be wearing the nametag, and I -- I  
16 felt, sort of, like, I -- I wasn't going to take it off.

17 And he told me that he supported me, but if I chose to  
18 continue to wear the pin, it would result in, like, a coaching.  
19 And I explained that I wasn't going to be taking it off, and he  
20 told me that I would have an infraction.

21 Q And did you -- did you, in fact, receive a -- an  
22 infraction?

23 A Yes.

24 Q Did you sign a copy of something?

25 A Yes. He -- he read out loud everything that was on the



1 paper, but I don't remember what it said. And -- and he told  
2 me that I had to, like, sign that I chose not to abide by the  
3 dress code.

4 Q And were you able to continue wearing the -- the pin  
5 through the rest of your shift?

6 A I don't remember.

7 Q Do you remember if the -- you don't remember? Okay.  
8 Would -- did you give a -- did you give a -- an affidavit in --  
9 in the investigation of this case?

10 A Yes.

11 Q And was that a -- a -- a time that was around September  
12 29th, 2020?

13 A Yes.

14 Q Were these events fresher in your mind at that time?

15 A Yes.

16 Q Do you recall stating in the affidavit after receiving --  
17 MR. FERRELL: Object -- objection. Where -- where are we  
18 going with this?

19 MR. PETERSON: I'm trying to refresh the witness'  
20 recollection. She's -- she couldn't recall whether she wore  
21 the pin through the remainder of her shift after the  
22 disciplinary meeting.

23 JUDGE SOTOLONGO: Go on.

24 Q BY MR. PETERSON: Yeah. Do you recall saying that -- in  
25 that affidavit after receiving the disciplinary, I returned to

1 my shift and worked the rema -- remainder of my shift with  
2 Breonna Taylor's name on my nametag?

3 A Yes.

4 Q Does that refresh your recollection as to whether you wore  
5 the -- the Breonna Taylor pin through the remainder of your  
6 shift?

7 A Yes.

8 Q And what do you -- do you recall whether you did or  
9 didn't?

10 A I did wear it.

11 MR. PETERSON: Okay. Your Honor, permission to share  
12 another exhibit with the witness?

13 JUDGE SOTOLONGO: Go -- go ahead.

14 MR. PETERSON: Okay. I'm putting General Counsel 79 into  
15 the -- the chatroom, and I'll -- I'll share it on my screen as  
16 well.

17 Q BY MR. PETERSON: Ms. London, were you able to open that  
18 document?

19 A It's downloading.

20 Q Okay. I'm also -- I -- I'm sharing my screen. Are you  
21 able to see that?

22 A Yes.

23 Q And do you -- do you recognize what's depicted on that  
24 Exhibit 79?

25 A Yes. It's an Instagram post featuring a Black Lives

1 Matter bracelet.

2 Q And do you know whose hand that is?

3 A My hand.

4 Q And the post is from October 12th, 2020. Do you see that?

5 A Yes.

6 Q Is that about the time that you posted this photograph?

7 A Yes.

8 Q Is that a -- a Black Lives Matter bracelet that you -- did  
9 you ever wear that Black Lives Matter bracelet to work?

10 A Yes.

11 Q How many times?

12 A I received it from a team member, and ever since she gave  
13 it to me I haven't stopped wearing it.

14 Q And when was that? Do you remember when that was in  
15 relation to October 12th when you posted this?

16 A I received the bracelet around August.

17 Q And have you noticed other team members wearing similar  
18 bracelets at your store?

19 A She made the bracelet and she was wearing one.

20 Q Did you ever -- other than yourself and her, did you see  
21 anyone else wearing Black Lives Matter or -- or BLM -- either  
22 of those phrases at work?

23 A No.

24 Q Did any -- any of your store leadership say anything to  
25 you about the Black Lives Matter bracelet?

1 A Yes.

2 Q And who -- who -- which of your store leadership said  
3 something to you about the bracelet?

4 A My team leader, Eder Nunez, complimented my bracelet  
5 saying that he liked it.

6 Q And when -- do you recall when that was in --

7 A This was around, like, August as well.

8 Q Any other conversations with management about the bracelet  
9 you were wearing?

10 A No.

11 Q And the -- the Instagram post, is that -- who -- whose  
12 writing is that -- the rest of the -- the -- the writing on  
13 that post?

14 A That's my writing.

15 MR. PETERSON: And what -- okay. Yeah. So I'll move for  
16 the -- the admission of General Counsel's 79 for the photograph  
17 itself, not -- not for the -- the photograph and the date  
18 and -- and not for the -- the writing that's contained therein.

19 MR. FERRELL: Your Honor, I don't object to this exhibit.  
20 It appears to be a modified version of what is -- was produced  
21 actually as Yuri London Exhibit 63, which is the -- the actual  
22 full photo that was posted in the Instagram account by Ms.  
23 London.

24 MR. PETERSON: Well, we've got -- I -- so I -- this is one  
25 that was produced. I chose this one because it had the date.

1 MR. FERRELL: Yeah, but it also misrepresents the entire  
2 photo, so I'd like 63 included with the photo as to what the  
3 photo is actually about.

4 JUDGE SOTOLONGO: 63? It was something that was produced  
5 and admitted?

6 MR. FERRELL: No. It's -- 63 is the page prior in Ms.  
7 London's production --

8 JUDGE SOTOLONGO: Oh, I see.

9 MR. FERRELL: It was with the photo.

10 JUDGE SOTOLONGO: (Indiscernible - simultaneous speech) --

11 MR. FERRELL: And I actually got --

12 JUDGE SOTOLONGO: 63. Okay.

13 MR. FERRELL: -- and what's --

14 JUDGE SOTOLONGO: I -- I misheard you. I wasn't sure what  
15 you were referring to.

16 MR. FERRELL: Sorry. No. The production number, Your  
17 Honor.

18 JUDGE SOTOLONGO: All right. Six -- oh, 63 as in  
19 production number. I see. I --

20 MR. FERRELL: 64 is an -- in an effort to, apparently,  
21 zoom on -- on what the small bracelet on Ms. London wrist says,  
22 but 63 actually shows what the -- what the post is about and  
23 what the photo is about, which is what she's holding which  
24 appears to be a -- a moisturizer -- moisture cream.

25 MR. FERRELL: Yeah. I mean, it's -- I mean, I felt with

1 the -- the stick -- the -- with -- with not using the -- Ms.  
2 London has a -- a business, and this is a post related to her  
3 business, but I'm just -- the purpose of the exhibit is just to  
4 show the Black Lives Matter bracelet that she was wearing to  
5 work and -- and described. If you want to -- if you have 63  
6 and want to offer it as well --

7 MR. FERRELL: If I could -- no. To -- to not -- to  
8 represent 64 properly, I want 63 included in General Counsel's  
9 Exhibit 79. I think this misrepresents it. And Your Honor, if  
10 I may -- for voir dire purposes, I -- I think what counsel is  
11 just saying is this is actually a post about Ms. London's  
12 separate, private business, not her employment at all. And  
13 whi -- and this picture is not taken, as I understand it, then  
14 while she's a work at Whole Foods?

15 MR. PETERSON: Yeah. I would stipulate to -- to all of  
16 that. Yeah, the bracelet's just --

17 MR. FERRELL: What is the relevance of this?

18 MR. PETERSON: Well, this shows the bracelet that she  
19 said she was wearing at work, even though she doe -- even  
20 though it was -- the picture actually shows --

21 JUDGE SOTOLONGO: So General Counsel is only offering the  
22 photograph, not the -- not the content of the message, or  
23 basically, I -- I assume that General Counsel is not trying to  
24 push a -- a skin -- a skin cream product here. So it's only  
25 for the photo -- I assume, Mr. Peterson, you don't have any

1 other photos of this bracelet separate from or independent from  
2 any other message?

3 MR. PETERSON: Not separate from -- yeah. They're -- they  
4 are, kind of, multiple -- multiple repeats of this photo with  
5 various posts that were -- were -- were below it. I just -- I  
6 included this one because it has the -- the date and wanted to  
7 get a little bit of a -- a -- a time reference. But yeah. I'm  
8 not interested in the -- the content other than the -- the  
9 photograph of the message that she testified she -- she wore --

10 MR. FERRELL: And -- and to be clear, Your Honor, I -- I  
11 think what the General Counsel's actually saying is, as I  
12 understand it, is this photo has absolutely -- the photo has  
13 absolutely nothing to do with Ms. London's employment or work  
14 at Whole Foods. It's her selling moisturizer cream in her  
15 private business. The only relevant aspect here at all is that  
16 she's testifying that she apparently wore this -- this small  
17 bracelet while she was working, although this -- this picture  
18 does nothing other than show me what she says the bracelet  
19 looked like.

20 JUDGE SOTOLONGO: Well, that -- I -- that understood, and  
21 she's -- they're offering just for the fact, a example of  
22 the -- the photograph of the bracelet she wore at work. None  
23 of the other -- none of the other things contained in the  
24 exhibit being offered --

25 MR. FERRELL: Including -- including, Your Honor, that

1 this photo is not of her wearing it at work at all.

2 JUDGE SOTOLONGO: That -- that -- so I -- so I'm, sort  
3 of -- and I think Mr. Peterson said he was willing --

4 MR. PETERSON: Yeah, I --

5 JUDGE SOTOLONGO: -- to stipulate to that.

6 MR. PETERSON: Yes.

7 JUDGE SOTOLONGO: It's simply a photograph of the -- he's  
8 offer for the photograph of a bracelet that she -- that she  
9 testified she wore at work. She -- so the -- so this  
10 photograph was not taken at work, but apparently, this the only  
11 known photograph of the bracelet, so the General Counsel's  
12 offering for a purpose.

13 MR. PETERSON: Correct.

14 MR. FERRELL: Now, we would object relevance to the  
15 photo -- object relevance and also incompleteness as to the  
16 photo.

17 JUDGE SOTOLONGO: Overruled. I'm going to admit 78 --  
18 again, I admit 6 -- 78 -- 79. I'm admitting it just for the  
19 photograph, and with the understanding that the photo was not  
20 taken at work, but that Ms. London has testified that that is  
21 the bracelet that she wore at work. So sev -- with that  
22 understanding, 79 is admitted.

23 **(General Counsel Exhibit Number 79 Received into Evidence).**

24 MR. PETERSON: Thank you, Your Honor.

25 Your Honor, I'd like to share one more exhibit with the



1 witness.

2 JUDGE SOTOLONGO: Go -- go ahead.

3 MR. PETERSON: Again, Ms. London, let me know when you're  
4 able to download the General Counsel's Exhibit 80.

5 THE WITNESS: I have it.

6 Q BY MR. PETERSON: Are you able to open it?

7 A Yes.

8 Q Do you recognize what is -- what -- what -- what -- what  
9 is included in General Counsel's Exhibit 80?

10 A This is an email that I sent to Seth about the inclusion  
11 task force submission.

12 Q And why -- what -- had you -- had you spoken with Seth  
13 about the inclusion task force prior to July 5th when you sent  
14 this email?

15 A Yes. I spoke to him before July 5th.

16 Q Was -- did the discussion come up during any of the  
17 conversations you had described previously?

18 A I don't remember.

19 Q Okay. Why did you -- why did you submit this -- this  
20 essay?

21 A I submitted the essay because Seth told me that -- that  
22 this was -- that the inclusion task force was created so that  
23 employees could sign up to sort of just make sure that  
24 everyone's really included and that there is equality.

25 Q And did that -- do you remember if that was before or

1 after your conversations about the Black Lives Matter mask that  
2 you're wearing?

3 MR. FERRELL: Objection. Asked and answered. I think the  
4 witness established this conversation was on or about July 5.

5 MR. PETERSON: I didn't -- I didn't -- I didn't think she  
6 recalled when it was.

7 JUDGE SOTOLONGO: Yeah. That wasn't clear to me either.  
8 But that's all right. Go ahead.

9 A What?

10 Q BY MR. PETERSON: Yeah. Okay. So do -- do you recall  
11 when -- how did you first hear about the inclusion taskforce?

12 A I heard about the inclusion taskforce from Seth when we  
13 had the conversation about the Black Lives Matter face mask.

14 Q And what did -- what -- what did he say about the  
15 inclusion taskforce?

16 A He told me -- Seth told me that the inclusion taskforce  
17 was created and that this is what he found out after, like,  
18 contacting all the higher ups to sort of see what we could do  
19 in regards to the face mask and, like, the card lanyards and  
20 what, like, I could do to make the store feel more supported.

21 Q Is the -- page 4, is -- is -- is -- is -- can you see page  
22 4 of the exhibit?

23 MR. FERRELL: I'm sorry, Counsel, are you -- are you  
24 sharing?

25 MR. PETERSON: I -- I'm not. I mean, it's -- yeah, I

1 can -- I guess I can.

2 JUDGE SOTOLONGO: Why don't you go ahead and share that so  
3 that everybody can see what you're talking about?

4 MR. PETERSON: All right. So yeah, so this is page 4 of  
5 General Counsel's Exhibit 80.

6 Q BY MR. PETERSON: Do you see that?

7 A Yes.

8 Q And what is -- yeah. And is that -- is that your essay  
9 that in -- that you attached to the email?

10 A Yes.

11 Q And what was your purpose in sending this essay?

12 A My purpose in sending the essay was because I wasn't able  
13 to submit it on time. And so I sent it to Seth so he could  
14 send it in.

15 Q And what -- was the essay -- were you hoping something  
16 would happen as a result of sending in this essay?

17 A I was hoping to be included in the inclusion task force  
18 and that I could talk with, like, all the different stores and  
19 how we can make sure that we are being inclusive.

20 Q And inclusive with respect to what?

21 A In respect to everyone. And in -- in respect to black  
22 employees in the stores.

23 Q And then this email, July 22nd, appears to be a -- a  
24 response. Is that -- is that the response you received?

25 A Yes.

1 MR. PETERSON: Okay. I move for the admission of General  
2 Counsel's 80.

3 JUDGE SOTOLONGO: Any objection?

4 MR. FERRELL: Well, I -- I have an objection for -- for  
5 relevance. And I would ask to voir dire Ms. London, for just a  
6 couple of questions, Your Honor.

7 JUDGE SOTOLONGO: Go ahead.

8 **VOIR DIRE EXAMINATION**

9 Q BY MR. FERRELL: Ms. London, General Counsel's Exhibit 4,  
10 I mean, General Exhibit 8 -- General Counsel's Exhibit 80,  
11 that's in front of you. Can you find for me anywhere in -- in  
12 your essay where you discuss Black Lives Matter or the dress  
13 code?

14 A No, I didn't include it because I thought that would  
15 affect my submission.

16 Q Okay. So you know, in all of General Counsel's 80 -- and  
17 take a moment to review it if you need it. Am I right that  
18 there's no mention of the phrase Black Lives Matter, the Black  
19 Lives Matter movement, or the dress code in all of General  
20 Counsel's 80?

21 A You're correct.

22 MR. FERRELL: Your Honor, I object to relevance. There's  
23 an inclusion task force. That's -- that's not a secret. But  
24 the issue before you is whether Whole Foods' enforcement of its  
25 dress code to prohibit store team members from wearing a Black

1 Lives Matter messaging while working in the store is protected  
2 activity. This doesn't have anything to do with that.

3 MR. PETERSON: Yeah, it's -- Your Honor, if I may be  
4 heard?

5 JUDGE SOTOLONGO: Go ahead.

6 MR. PETERSON: Yeah. So this -- so this is an example of  
7 employees attempting to raise these issues with management and  
8 management even giving them a solution as a forum for where  
9 they could address some of their related concerns regarding  
10 Black Lives Matter and -- and their -- the reasons for -- for  
11 wearing it. And yeah, it's -- I -- I do understand that she  
12 does not specifically mention the phrase Black Lives Matter,  
13 but it came out of connection with one of those meetings.  
14 And -- and she explained why she didn't include the -- the  
15 actual phrase Black Lives Matter.

16 MR. FERRELL: Your -- Your Honor, with all due respect,  
17 you're -- you're not diversity equity inclusion police for the  
18 country. We have -- we have a complaint. We have an  
19 allegation. You're being asked to decide on an issue. This  
20 exhibit, while it might touch on diversity equity inclusion  
21 efforts at Whole Foods, does not address the allegations of the  
22 issue before you.

23 JUDGE SOTOLONGO: I'm reading it as we speak. I'm going  
24 to admit it and then decide what weight to give it. You're  
25 going to have to persuade me, Mr. Peterson, that there is a

1 nexus. I don't see it right off the bat, but I'm going to  
2 admit it. And I'm going to -- I want you to address in your  
3 brief. I'm going to admit it.

4 **(General Counsel Exhibit Number 80 Received into Evidence)**

5 JUDGE SOTOLONGO: And -- but you have to show me there is  
6 sort of a nexus that is apparent, because it isn't me at this  
7 point between this communication and -- and the issue, which is  
8 before me, that is the word of Black Lives Matter masks and  
9 other apparel.

10 (Indiscernible, simultaneous speech)

11 MR. FERRELL: And, Your Honor, just for clarification.  
12 Your -- your admission is dependent upon General Counsel  
13 showing some nexus between this exhibit and inclusion -- that's  
14 where -- and the wearing of Black Lives Matter messaging by  
15 team members while working?

16 JUDGE SOTOLONGO: That is correct, I mean, but that's  
17 something that you have to do at the end of the case. And --  
18 and basically, if that nexus is established, then I'm going to  
19 give this -- this evidence little or no weight.

20 MR. FERRELL: Understood. Thank you.

21 MR. PETERSON: Thank you. Understood. I have -- I have  
22 no further questions for Ms. London. Thank you very much.

23 JUDGE SOTOLONGO: All right. Mr. Ferrell, I suppose you  
24 want to ask for the Jencks statements?

25 MR. FERRELL: I do, Your Honor. And the other thing I'd

1     like to try to make use of this time, is Ms. London had  
2     testified about some Instagram posts that she made. There is  
3     another video that she posted on her Instagram, that was  
4     produced to us pursuant to subpoena that we have prepared --  
5     had a court reporter prepare a transcript for -- to aid in --  
6     in questioning Ms. London about her post. And while we're  
7     reviewing the Jencks statement, I'd -- I'd like to provide  
8     Counsel and Ms. London a copy of that transcript, and she can  
9     read it. And we have verified its accuracy, but so that she  
10    and General Counsel are comfortable with its accuracy. Watch  
11    the video and read the transcript while we're taking a break  
12    with the Jencks statement and come back, and she can confirm  
13    the accuracy.

14           JUDGE SOTOLONGO: Well, let me -- let me, okay. Let me  
15    explore that for a second. So you're saying that pursuant to a  
16    subpoena, Ms. London produced a video of some type that she  
17    made, and it was something that was posted on Instagram; is  
18    that correct?

19           MR. FERRELL: Yes. The same -- the same account where she  
20    posted the -- the photo that General Counsel introduced as an  
21    exhibit. She also has -- has a video from June 8 of 2020.

22           JUDGE SOTOLONGO: Okay. And so you -- your office made a  
23    transcript based on the video of that and that's what you're  
24    going to be submitting to -- to Mr. Peterson -- excuse me --  
25    and Ms. London at this time; is that correct?

1 MR. FERRELL: Right. I -- I -- I wanted to make use of  
2 the time to give us --

3 JUDGE SOTOLONGO: Yes, well, okay. Yes.

4 (Indiscernible, simultaneous speech)

5 JUDGE SOTOLONGO: Yes, go ahead. So while you're  
6 reviewing their statement, I want you, Ms. London and Mr.  
7 Peterson, to review the transcript that Mr. Ferrell also made  
8 available to you. And how much time would you think we'll need  
9 for this process, Mr. Ferrell?

10 MR. FERRELL: I would think -- I mean, the video itself,  
11 I'm not sure if it's 12 minutes. It might be shorter than  
12 that.

13 MS. SCHAEFER: It's only six.

14 MR. FERRELL: Sorry --

15 MS. SCHAEFER: Six or seven.

16 MR. FERRELL: Six or seven minutes. So I -- I would think  
17 a half an hour, Your Honor. Obviously, they -- they could  
18 listen to it multiple times if they wanted to.

19 JUDGE SOTOLONGO: All right. All right. So according to  
20 my watch, it is now 10:10 Pacific Time. 12:10, Chicago and --  
21 and 1:10 on the East Coast. Let's resume -- let's make it 35  
22 minutes. So let's resume at 10:45 Pacific, which would be  
23 12:45 in Indiana. West Indiana is the same time zone as  
24 Chicago right? Am I correct?

25 MR. PETERSON: I think they're on eastern. Indiana is --



1 JUDGE SOTOLONGO: Oh, Indiana's on eastern? Oh --

2 MR. PETERSON: Indiana's

3 (Indiscernible, simultaneous speech)

4 JUDGE SOTOLONGO: I stand corrected. So it would be 12:45  
5 Chicago time and 1:45 Eastern Time zone. So in 35 minutes. So  
6 let's -- let's go on break.

7 (Off the record at 10:10 a.m.)

8 JUDGE SOTOLONGO: All right. I think we're missing a  
9 couple of people, at least they haven't turned their cameras  
10 on. But let's -- let's go ahead and proceed. Let's go back on  
11 the record.

12 All right. Mr. -- Mr. Ferrell, please proceed.

13 MR. FERRELL: Thank you, Your Honor.

14 **CROSS-EXAMINATION**

15 Q BY MR. FERRELL: Ms. London, have you ever seen the copy  
16 of the complaint in this case?

17 A Yes.

18 Q Okay. You understand then that the -- the sum total of  
19 the allegations -- Mishawaka, Indiana store where you worked  
20 are --

21 MR. FERRELL: And I'm reading from paragraph 7-K of the --  
22 of the complaint, Your Honor and Counsel.

23 Q BY MR. FERRELL: The sum total of the allegations about  
24 Mishawaka, are the, quote, about June 9, 2020, store team  
25 manager, Seth Carlson, informed employees that they were

1 required to remove their Black Lives Matter mask, end quote.  
2 That's the allegation, this complaint, with respect to your  
3 store. You understand that, right?

4 A Yes.

5 Q And not an allegation in -- in the complaint that relates  
6 to any discipline that was or was not issued to you, right?

7 A Yes.

8 Q Not an allegation that relates to wearing of nametags with  
9 George Floyd or Breonna Taylor's name?

10 A Yes.

11 Q In a point of fact, Ms. London, there were not actually  
12 any other employees wearing a Black Lives Matter mask on or  
13 about June 9, 2020, in the Mishawaka, Indiana store; isn't that  
14 right?

15 A Yes.

16 Q So store team leader, Seth Carson, did not, in fact,  
17 inform other employees to remove masks that they were not  
18 wearing, right?

19 A Yes.

20 Q What you were referring to was from a private conference  
21 that you had with Mr. Carlson in his office on -- on June 9, in  
22 response to your question about whether you would be allowed to  
23 wear your Black Lives Matter facemask, right?

24 A Yes.

25 JUDGE SOTOLONGO: By the way, Mr. Ferrell, sometimes it --

1 the -- if you -- I don't know if you could reposition your  
2 camera a little bit so that we can see you fully? About half  
3 of the face is cut at times. And maybe -- maybe that's on  
4 purpose. But in any event, let me --

5 MR. FERRELL: That might be a good idea. I -- I will -- I  
6 will try to do better, Your Honor.

7 JUDGE SOTOLONGO: All right.

8 Q BY MR. FERRELL: Now. Ms. London, I want to talk to you  
9 about June -- June 8. You did have a meeting that day with Mr.  
10 Carlson, correct? The store team leader?

11 A Yes.

12 Q And the other person -- I think you testified, you  
13 couldn't recall who was in attendance, but it was actually Jill  
14 Smith from team member services at the Mishawaka store. You  
15 remember that now?

16 A Yes.

17 Q You -- you know Jill, right?

18 A From what I remember, yes.

19 Q So it's the three of you who were in that meeting on June  
20 8 in the store team leader's office, right?

21 A Yes.

22 Q And -- and the whole purpose of that meeting was that you  
23 were wearing a Whole Foods nametag on your apron that had  
24 George Floyd's name on it, right?

25 A Yes.

1 Q There was nothing about wearing a Black Lives Matter mask  
2 at -- at that meeting at all, right?

3 A Correct.

4 Q Is that correct? I'm sorry.

5 A Yes.

6 Q Because you had worn a Black Lives Matter, right?

7 A Right.

8 Q At the store, right? Is that correct?

9 A Yes.

10 Q Now on June -- and the June 8 meeting, Mr. Carlson, store  
11 team leader, instructed you that your name tag with George  
12 Floyd written on it was not in compliance with the dress code,  
13 right?

14 A Yes.

15 Q You gave, in -- in your board affidavit in this case,  
16 you -- from August 25 of '20, you said that Mr. Carlson told  
17 you, "I had to change the name tag for a name tag that did not  
18 violate the dress code policy", right?

19 A Yes.

20 Q You responded or you -- you go on in your -- your Board  
21 affidavit to say, "I told him", you mean Mr. Carlson, "that I  
22 understand the policy, but that I am a black woman who needed  
23 to support her community". Recall saying that?

24 A Yes.

25 Q And -- are you looking down. Do you have a copy of your

1     affidavit in front of you?

2     A     No, I'm picking at my cuticles.

3     Q     Understand. I just wanted to check, since -- I don't have  
4     the ability to see what you're looking at. There you go. Now,  
5     what did you mean there, Ms. London, about her community? What  
6     was the community you wanted to show support for?

7     A     I wanted to show support for black people within, like,  
8     establishments like Whole Foods and in the workplace and in  
9     stores.

10    Q     Not any other black people? It was limited to -- to  
11    that?

12    A     It -- it wasn't limited to just, like, being in, like, the  
13    workplace or in stores. It was just like in life and in just  
14    like systems in general.

15    Q     But -- but in life, in general, all -- all black people in  
16    the community of Mishawaka in South Bend?

17    A     No.

18    Q     No? You -- you weren't concerned about some of the black  
19    people in Mishawaka and South Bend?

20    A     I was concerned but it wasn't limited to Mishawaka and  
21    South Bend.

22    Q     Oh, you mean it was broader than Mishawaka itself? But it  
23    included all black people in Mishawaka and South Bend, right?

24    A     Of course.

25    Q     And all -- all black people in America?

- 1     A     Yes.
- 2     Q     The world?
- 3     A     Yes.
- 4     Q     Right? Kids?
- 5     A     Yes.
- 6     Q     All -- all people?
- 7     A     Yes.
- 8     Q     It wasn't specific to only those people who were working  
9     at Whole Foods or working generally, right?
- 10    A     No.
- 11    Q     You testified earlier that after the June 8 meeting that  
12    you did not take off your George Ford nametag. Do you recall  
13    saying that?
- 14    A     Yes.
- 15    Q     Now. In Board affidavit, that's not what you say. You  
16    recall that?
- 17    A     I don't remember.
- 18    Q     Okay. In your Board affidavit, you state, quote, he --  
19    referring to Mr. Carlson, made me take off my name tag and use  
20    one with just my name. Carlson did not discipline me, although  
21    I was upset and voluntarily clocked out and went home after  
22    this meeting. You recall saying that in your -- in your Board  
23    affidavit?
- 24    A     Yes.
- 25    Q     Does that refresh your recollection that, in fact, you did

1 take off the George Flag -- George Floyd nametag at the June 8  
2 meeting?

3 A Yes.

4 Q You talked about it in direct, having conversations with,  
5 I think three people, about the wearing of the George Floyd  
6 nametag and the possibility of -- of wearing other Black Lives  
7 Matter messaging. You recall that?

8 A Yes.

9 Q And to your understanding, Ms. London, is wearing the  
10 George Floyd nametag part and parcel of your wearing Black  
11 Lives Matter messaging? Do you understand what I mean by that?

12 A Yes.

13 Q Is that the answer to my question? Yes, it is the same  
14 thing?

15 A Yes.

16 Q You were wearing George Floyd on your nametag to show  
17 support for the Black Lives Matter movement, right?

18 A Yes.

19 Q The movement that had resulted in some -- some protests  
20 around the country after Mr. Floyd's killing at the end of May  
21 of 2020, right?

22 A Yes.

23 JUDGE SOTOLONGO: Excuse me. We're -- we're picking up  
24 some voices in the background. I don't know where that might  
25 be coming from. So just, please -- please check your -- that

1     your mic -- all those persons except Ms. London, Mr. Ferrell,  
2     Mr. Peterson, of course, myself, should be on mute. So go  
3     ahead, Mr. Ferrell. Excuse me for -- for interrupting.

4             MR. FERRELL: Thank you, Your Honor.

5     Q     BY MR. FERRELL: And we -- we just talked about from your  
6     affidavit, after the meeting on June 8 with Mr. Carlson and --  
7     and Ms. Smith, you were upset, and you clocked out and you went  
8     home, right?

9     A     Yes.

10    Q     Your shift wasn't over, right?

11    A     Yes.

12    Q     You weren't asked to leave, right?

13    A     Yes.

14    Q     But you wanted to leave, and you did?

15    A     Yes.

16    Q     And did you do so pretty much immediately after the  
17    meeting?

18    A     Yes.

19    Q     So you clocked out. You left Mr. Carlson, the store team  
20    leader's office, and went and clocked out and left; is that  
21    right?

22    A     Yes.

23    Q     And you were not disciplined for -- for leaving early or  
24    clocking out without approval, right?

25    A     No.



1 Q So am I right then, Ms. London, that -- that after you  
2 left Mr. Carlson's office, there wasn't -- there was a time  
3 when you were still working in the store to have conversations  
4 with other team members or coworkers before you left --

5 A Right.

6 Q -- is that right?

7 A Yes.

8 Q Now during your June 8 meeting, you had raised the issue  
9 about -- with Mr. Carlson about his ability to wear, I think a  
10 pride lanyard that was Whole Foods issued, right?

11 A Yes.

12 Q And I -- I think he told you he wanted to think about  
13 that, right?

14 A Yes.

15 Q Think about the point that you were making, is that right?

16 A Yes.

17 Q And that's part of some of the things, and we'll get to  
18 it. That's -- that's one thing you talked about on your  
19 Instagram post that you made later that day, right?

20 A Yes.

21 Q What happened is you left the store and sometime shortly  
22 thereafter, you posted an Instagram video talking -- or  
23 who's -- coming out of your meeting with Mr. Carlson on June 8,  
24 right?

25 A Yes.

1 Q And the purpose of the meeting -- well, you -- you met  
2 again, though, with Mr. Carlson on June 9, right?

3 A Yes.

4 Q When you got to work, right?

5 A Yes.

6 Q And the purpose of that meeting, as he told you, were --  
7 was to follow up on the meeting you had the day before; the  
8 things that he'd said he wanted to think about.

9 A Yes.

10 Q It wasn't because you're wearing a George Floyd nametag;  
11 you weren't. Right?

12 A Yes.

13 Q So at the June 9 meeting, there was -- it was in the store  
14 team leader office again?

15 A Yes.

16 Q There was you and Mr. Carlson and one other manager,  
17 right?

18 A Yes.

19 Q A leader. You recall if that was associate team leader,  
20 Jamie Porter?

21 A I think so.

22 Q You talked about it, at that meeting, that one of the  
23 reasons it was important to you to wear George Floyd's name on  
24 your nametag was that you had personally been affected by  
25 police brutality, right?

1 A Correct.

2 Q You had -- had police put guns in your face before?

3 A Yes.

4 Q You'd had police -- I think you said maybe slam you  
5 against a car before or against a building of some kind; is  
6 that right?

7 A Yes.

8 Q And that you identified with George Floyd because you,  
9 too, have been a victim. You knew what it was like to be a  
10 victim of police brutality, right?

11 A Um-hum. Yes.

12 Q And that's what showing support for George Floyd was about  
13 to you, right?

14 A Yes.

15 Q Mr. Carlson told you, though, I think expressing some  
16 personal support for Black Lives Matter movement and how you  
17 felt, but that wearing George Floyd on your nametag was against  
18 dress code and -- and wouldn't be allowed, right?

19 A Yes.

20 Q And it was at the end of that meeting, you asked him about  
21 whether you'd be allowed to wear a Black Lives Matter facemask,  
22 right?

23 A I don't remember.

24 Q You recall talking to him or asking him at all during that  
25 meeting whether you'd be allowed to wear a Black Lives Matter

1 facemask?

2 A I don't remember.

3 Q And you don't remember whether at that meeting he told you  
4 that wearing a Black Lives Matter facemask would be against the  
5 dress code?

6 A I remember talking to him and he mentioned that, like, I  
7 could wear a Black Lives Matter bracelet, but he didn't say  
8 anything about a facemask.

9 Q And well, let's just talk about the bracelet for a  
10 second. A conversation about bracelet would be because a  
11 bracelet was deemed to be jewelry, right?

12 A Correct.

13 Q And jewelry was not covered by the dress code?

14 A I assume so.

15 Q When you -- you testified on direct that you did wear a  
16 bracelet, at some point, right?

17 A Correct.

18 Q And the bracelet said BLM on it?

19 A Yes.

20 Q It -- it was small and maybe not so easy to see, but you  
21 said that a team leader had -- had at least noticed it and  
22 complimented you on it at one point?

23 A Yes.

24 Q But nobody ever said anything about making you --  
25 requiring you to remove your jewelry, right?

1 A No. They never said anything.

2 MR. FERRELL: Counsel, who might could call up General  
3 Counsel 78?

4 MS. SCHAEFER: I can do it.

5 MR. FERRELL: Oh, thank you, Erin.

6 Q BY MR. FERRELL: Ms. London, can you see what's been  
7 called up as General Counsel's Exhibit 78?

8 A Yes.

9 Q Now, the timestamp on this photo is June 9, 4:43 p.m.  
10 Right?

11 A Yes.

12 Q And I think you testified on your direct, this was before  
13 you started working?

14 A Yes.

15 Q Because you're not in your apron, right?

16 A No.

17 Q And your shift probably started at 5:00; is that right?

18 A Yes.

19 Q Where was this picture? Where did you take this picture?

20 A I took this picture at home, before I left for work.

21 Q So this picture is not even actually at the -- at the  
22 store, at all?

23 A No.

24 Q In fact, with respect to whether it's, obviously at home,  
25 but even at the store, if you were -- if you were on break or

1 before you clocked in, or after you clocked out, Mr. Carlson  
2 had told you, you were free to wear your Black Lives Matter  
3 facemask, right?

4 A Yes.

5 Q It was while working in the store that it was not  
6 permitted, right?

7 A Yes.

8 Q And I think you stated on --

9 MR. FERRELL: I'm sorry we can -- we're done with General  
10 Counsel 78. Thank you.

11 Q BY MR. FERRELL: I think you stated on direct that you  
12 only actually ever wore the Black Lives Matter facemask, that  
13 we just looked at in the photo, to the store on the one time,  
14 right?

15 A Yes.

16 Q And that would have been the day after you had the meeting  
17 with Mr. Carlson about the George Floyd nametag, right?

18 A Yes.

19 Q So that's June 9 of 2020; sounds about right?

20 A Yes.

21 Q Same day you had that follow-up meeting with Mr. Carlson?

22 A Yes.

23 Q And in your -- you recall, you gave a -- an affidavit in  
24 this -- in the Title VII litigation, in a class action  
25 litigation. You recall that?

1 A Yes.

2 Q Your affidavit in that other case was signed August 7,  
3 2020, in the matter of Suverino Frith et al v. Whole Foods  
4 Market; you recall that?

5 A Yes.

6 Q In paragraph 13 of your affidavit in the Title VII case,  
7 you say that you wore a Black Lives Matter mask to work, and  
8 after approximately five to ten minutes Seth called me into his  
9 office again and told me I was in violation of the dress code  
10 because my mask had lettering. You recall saying that?

11 MR. PETERSON: Your Honor, may -- Mr. Ferrell, may I see a  
12 copy of the -- document that you're referring to?

13 MR. FERRELL: Not at this time, Your Honor. I'm just  
14 asking the witness whether she recalls saying that.

15 MR. PETERSON: I -- I -- I don't have a copy of this  
16 document and would like to review for accuracy.

17 JUDGE SOTOLONGO: I think that Counsel should be provided  
18 with a copy.

19 MR. FERRELL: Okay. Erin, are you able to -- to, I guess,  
20 email Mr. Peterson a copy of the affidavit?

21 MS. SCHAEFER: Sure. Just to be clear, we're talking  
22 about the Title VII affidavit that Ms. London submitted?  
23 Not --

24 MR. FERRELL: Correct.

25 MS. SCHAEFER: -- the affidavit in support? Okay.

1 JUDGE SOTOLONGO: Let -- let us know when you receive it  
2 Mr. Peterson. Let's -- let's pause here for a second. Mr.  
3 Peterson, let us know when you receive it.

4 MR. PETERSON: I will.

5 MR. FERRELL: And while we're waiting on that, Your Honor,  
6 I might just ask to -- just as a procedural matter, during the  
7 break, Ms. London was able to review her Instagram post and the  
8 transcript we provided and confirm the accuracy of the  
9 transcript or whether there's any edits that she had.

10 JUDGE SOTOLONGO: Ms. London?

11 THE WITNESS: It's right.

12 JUDGE SOTOLONGO: You -- you were able to review it?

13 THE WITNESS: Yes.

14 JUDGE SOTOLONGO: And it appears to be accurate --  
15 accurate transcription of the -- of what was said in the video?

16 THE WITNESS: Yes.

17 JUDGE SOTOLONGO: Okay.

18 MR. FERRELL: Thank you.

19 MR. PETERSON: Okay. I've received it. Thank you.

20 JUDGE SOTOLONGO: All right.

21 MR. FERRELL: And directing your attention, Counsel, to  
22 paragraphs 13 and 14, where I'm questioning from.

23 MR. PETERSON: Thank you.

24 JUDGE SOTOLONGO: Okay. Would you restate your question,  
25 Mr. Ferrell, so -- so that we all can be on the same page?



1 MR. FERRELL: Yes.

2 Q BY MR. FERRELL: Ms. London, I was asking you, if you  
3 recall that in your the Title VII litigation matter, in your  
4 declaration in that case from August 7 of 2020, that you  
5 recalled stating that you wore your Black Lives Matter mask to  
6 work and after approximately five to ten minutes, Mr. Carlson,  
7 Seth, called you into his office and told you you were in  
8 violation of the dress code policy because your mask had on it?

9 A Yes.

10 Q In fact, what Mr. Carlson asked you to do or told you you  
11 could do, was to flip your mask inside out and wear it with the  
12 lettering on the inside; which is what you did, right?

13 A Yes.

14 Q And after that, you wore a clean facemask without any  
15 lettering, ever since then. That was the only time you ever  
16 wore the --

17 A Yeah.

18 Q -- mask with lettering, right?

19 A Yes.

20 JUDGE SOTOLONGO: So the only day that you wore the mask  
21 with the Black Lives Matter messaging was on June the 9th; is  
22 that correct?

23 THE WITNESS: Yes.

24 JUDGE SOTOLONGO: Okay.

25 Q BY MR. FERRELL: And Ms. London, that was for the --

1 somewhere -- you wore it to work and somewhere in the first  
2 five to ten minutes is when Mr. Carlson called you into the  
3 store team leader's office to discuss it?

4 A Yes.

5 Q Now, during this, your June 9 meeting with Mr. Carlson,  
6 you also referenced that you had made an Instagram post after  
7 your meeting with him the prior day, right?

8 A Yes.

9 Q And earlier, going into break, I provided you with a  
10 transcript of that Instagram post that you made, and you've had  
11 a chance to review that and confirm the accuracy of -- of the  
12 transcript, correct?

13 A Yes.

14 MR. FERRELL: Your Honor, I'd like to introduce and have  
15 the -- direct the witness' attention to Respondent's -- what  
16 I'll mark for identification purposes as Respondent's Exhibit  
17 77. I think we're at 77, Ms. Schaefer, correct me if I got the  
18 numbers wrong.

19 MR. PETERSON: I believe 78.

20 JUDGE SOTOLONGO: Well, the last Respondent's exhibit,  
21 according to my record, is 77.

22 MR. FERRELL: Okay.

23 MS. SCHAEFER: Yeah, the next one is 78.

24 JUDGE SOTOLONGO: That's right.

25 MR. FERRELL: Then 78, I apologize.

1 MS. SCHAEFER: Mr. Ferrell, you're looking for the  
2 transcript or the video?

3 MR. FERRELL: The transcript.

4 Q BY MR. FERRELL: And Ms. London, here at the top of a page  
5 2, line 3, you talk about discussing, "a conversation that I  
6 had today with my store leadership". That -- that "today" that  
7 was the day you made this post; it was June 8, 2020, right?

8 A Yes.

9 Q And this is how long after your meeting in the store with  
10 Mr. Carlson on June 8, 2020?

11 A A couple of hours later.

12 Q And just below that, beginning at line 6 and running down  
13 through 13, you discuss how you, and why, you identify with  
14 George Floyd, because, again, this June 8 meeting was entirely  
15 about you wearing a George Floyd on your Whole Foods nametag,  
16 right?

17 A Yes.

18 Q You talk about not being any different than Mr. Floyd,  
19 right?

20 A Yes.

21 Q That you've had your face smashed in the ground by police?

22 A Yes.

23 Q You've had automatic weapons smashed in your face by  
24 police because of mistaken identity, et cetera?

25 A Yes.

1 Q That you have experienced police brutality and that's why  
2 it was personal and important to you to have -- to wear Mr.  
3 George -- Mr. Floyd's name on your nametag to show support,  
4 right?

5 A Yes.

6 Q We also had talked on direct about the fact that Mr.  
7 Carlson would ask you, I think, you testified about it several  
8 times in your meetings with him, ask you if you're okay and  
9 whether you needed anything that they could do for you. You  
10 recall that?

11 A Yes.

12 Q And at least one of those reasons was because he was aware  
13 that your cousin had been -- had been killed recently, right?

14 A Yes.

15 Q In fact, you talk about that in your Instagram post from  
16 that day, down at line -- beginning line 19, you say, "my  
17 cousin was murdered about two weeks ago and they were just  
18 checking in with me, seeing how I was doing", right?

19 A Yes.

20 Q And your cousin who was murdered, was a he or she?

21 A He.

22 Q He lived in Chicago?

23 A No. We live in Indiana.

24 Q Oh, was your cousin killed in Indiana?

25 A Yes.

1 Q Did it involve police at all or no?

2 A No.

3 Q Did it involve a Black Lives Matter protest at all, or no?

4 A No.

5 Q But you were going through grieving of the killing, and in  
6 fact, you say murder. So I don't know, and I don't want to get  
7 into the details of that. But your cousin had been murdered  
8 the last two weeks, that's why Mr. Carlson and others were --  
9 were making sure you were okay and making sure you were taking  
10 advantage of counseling that was available Whole Foods, right?

11 A Yes.

12 Q On the next page --

13 MR. FERRELL: Let's scroll down, Ms. Schaefer, to page 3.

14 Q BY MR. FERRELL: Beginning at lines 10, you talk about --

15 MR. FERRELL: Oh, and if you can scroll down just a little  
16 bit further so I can see at least lines, 20 and 21. Thank you.

17 Q BY MR. FERRELL: Beginning of line 10, you say, "this is  
18 my life. Literally, it's my life". That's why the issue was  
19 important to you, right? Your -- your ability to -- to live  
20 and breathe, right?

21 A Yes.

22 Q And at 19, "but I need you to be aware that my life and  
23 George Floyd lives matter". That's what the wearing of his  
24 name on your nametag was about, right? Showing -- sending that  
25 message.

1 A Yes.

2 Q You talked some about on -- on direct --

3 MR. FERRELL: And I'm not quite done with the exhibit, so  
4 bear with me one second, Your Honor and Ms. Schaefer.

5 Q BY MR. FERRELL: But talk some on direct, Ms. London,  
6 about wearing it because you wanted to start and have a  
7 conversation. You recall that?

8 A Yes.

9 Q And you wanted to have a conversation by wearing this  
10 messaging while you're working at Whole Foods store, you want  
11 to have a conversation with, including customers?

12 A No.

13 Q Not -- no customers. That's not who you wanted to talk  
14 to?

15 A No.

16 Q You weren't trying to prompt any conversation with  
17 customers at all?

18 A No.

19 Q And -- and how would customers know that?

20 A If they wanted to talk about it, we could talk about it.  
21 But it wasn't my goal to speak to them about it.

22 Q Okay. You -- it was your goal only to try to prompt  
23 conversation among your fellow coworkers?

24 A Yes.

25 Q About the Black Lives Matter movement?

1 A Yes.

2 Q About the -- the killing of George Floyd?

3 A Yes.

4 Q Now, at the bottom of page 4 --

5 MR. FERRELL: Ms. Schaefer, if you could?

6 Q BY MR. FERRELL: -- beginning at line 24. You say on your  
7 Instagram post and I'm sorry, I think you continue on page 5  
8 through line 1. On your Instagram post, Ms. London, you say,  
9 "I want people to talk about the death of black people because  
10 it is all unjust and there needs to be something done about  
11 it". And -- and the "it" at the end of -- on page 5, line 1,  
12 the "it" is the killing of black people, right?

13 A It's the killing and the misjust (sic) treatment of black  
14 people.

15 Q In this case by police, right?

16 A Yes.

17 Q And the people you want to talk about the death of black  
18 people, looking at page 4, line 24 to 25, are you telling me  
19 you only wanted those people to talk about it or other  
20 employees at Whole Foods?

21 A I wanted -- yeah, that's why I was wearing it. I wanted  
22 to talk to other employees about it.

23 Q Nobody else, huh?

24 A No.

25 MR. FERRELL: Ms. Schaefer, if you'll scroll down to page

1 6?

2 Q BY MR. FERRELL: And Ms. London, I'm going to direct your  
3 attention here to page -- to line 7 rather. You say, "so to  
4 Whole Foods, I'm asking you to support my life. To some  
5 more -- to support Ahmed Arbery's life. Ahmaud Arbery's life".  
6 And Ahmaud Arbery, Ms. London, he's the young man who was shot  
7 by white vigilantes driving through a neighborhood in Georgia;  
8 is that right?

9 A Correct.

10 Q "To support Tony McDade's life". Ms. London, who's Tony  
11 McDade?

12 A He was a man that was shot walking outside of his house to  
13 go to his car.

14 Q Do you know where Mr. McDade lived?

15 A No.

16 Q If I said Louisiana, would that sound about right to you?

17 A I don't recall.

18 Q Okay. Do you know if Mr. McDade was transgender?

19 A I don't know.

20 Q Continuing to say, "to support Breonna Taylor's life", and  
21 Breonna Taylor, and we'll talk more about her later. She was  
22 the young woman who was shot in her apartment during an  
23 unannounced police raid in Louisville, Kentucky; is that right?

24 A Yes.

25 Q To support Sandra Bland's case to be reopened. Who is



1 Sandra Bland?

2 A Sandra Bland was a woman who was murdered during a traffic  
3 stop and was killed in prison.

4 Q Is still in prison?

5 A No, she was killed while she was in holding.

6 Q And do you know where that occurred?

7 A No.

8 Q But these are the examples you cited in your Instagram  
9 post about why this matters and -- and what you're protesting  
10 and what you want people talking about, right? These wrongs.

11 MR. PETERSON: Objection, Your Honor. I'm going to raise  
12 a Rule 106, rule of completeness. There's one more -- one more  
13 comment in the same sentence that's being read under Rule 106,  
14 requires that when, in fairness, the completion of a document,  
15 sentence, or phrase should be read in at the time of the -- of  
16 the time of the offering of the exhibit.

17 MR. FERRELL: Well, Your Honor, Mr. Peterson is free to  
18 ask his questions on redirect. I'm introducing the entire  
19 transcript of the post he managed to omit during his --

20 JUDGE SOTOLONGO: Yes. Yes. It's overruled.  
21 Go ahead.

22 Q BY MR. FERRELL: So Ms. London, these are the examples you  
23 cited in -- in your post from -- from June 8, fresh out of your  
24 meeting with Mr. Carlson, about the examples of -- of the  
25 wrongs that you wanted to call to people's attention, right?

1 A Correct.

2 MR. FERRELL: Your Honor, I move to admit into evidence,  
3 Respondent's 78.

4 JUDGE SOTOLONGO: Mr. Peterson?

5 MR. PETERSON: No objection.

6 JUDGE SOTOLONGO: All right. Respondent's 78 is admitted.  
7 And to be clear, Respondent's 78 is a transcription of the  
8 video that Ms. London made in -- what platform again? Was  
9 that in -- in --

10 MR. FERRELL: In Instagram.

11 JUDGE SOTOLONGO: Instagram, okay. Very well.  
12 78 is admitted.

13 **(Respondent's Exhibit Number 78 Received into Evidence)**

14 Q BY MR. FERRELL: After the -- the one day on -- on June  
15 9th, that -- that -- you never wore a -- a Black Lives Matter  
16 mask to work again, right?

17 A No.

18 Q You did have a conversation on June 10 with Mr. Carlson  
19 again. Do you recall that?

20 A Yes.

21 Q There's time -- do you -- do you know, a Jen Lynward  
22 (phonetic throughout) from store leadership?

23 A Yes.

24 Q You recall if she attended the June 10 meeting with you  
25 and Mr. Carlson?

1 A Yes.

2 Q During that meeting, you remember Mr. Carlson telling you,  
3 that if he understood your position correctly, what you wanted,  
4 or at least one of the things you wanted, was that if Whole  
5 Foods Market takes a stance in supporting someone or something,  
6 you want team members to also be able to show their support,  
7 not just through dialogue but through physical representations  
8 like a button, badge, or flair, which is called flair, right?

9 A Yes.

10 Q And -- and you agreed with him at the time that that's  
11 what you wanted?

12 A Yes.

13 Q And that's whether Whole Foods was taking a position about  
14 anything: political, social, having nothing to do with the  
15 workplace, right?

16 A Yes.

17 Q You recall having text messages with one of your team  
18 members? I think you testified this would have been on June  
19 22nd, about wanting to join you in your show of support and in  
20 protest?

21 A Yes.

22 Q Not wanting you to -- you to be alone; is that right?

23 A Yeah.

24 MR. FERRELL: Ms. Schaefer, are you --

25 Q Well, let's see. And that text message and -- and the

1 name is redacted of -- of the team member, for their own  
2 privacy I understand, so I can't say who it was with, but from  
3 June 22nd. The text message was actually asking you whether  
4 you had more of the George Floyd pins, right?

5 A Yes.

6 Q It wasn't asking you if you had more Black Lives Matter  
7 masks. It was asking you if you had more George Floyd pins,  
8 right?

9 Q Yes.

10 Q Now after the date we talked about in June, the next time  
11 you wore something to the store and had a discussion with  
12 management about something Black Lives Matter related, was in  
13 August, right?

14 A Yes.

15 Q You ended up taking some personal leave away from work for  
16 about a month; is that right?

17 A Yes.

18 Q I think it was June 15 until August 17, that sound -- I  
19 mean, July 15 to August 17; does that sound about right?

20 A Yes.

21 Q And when you came back on August 17, you were wearing a  
22 nametag that said Breonna Taylor's name on it, in addition to  
23 your own, right?

24 A Yes.

25 Q These were -- at the time they use the circular nametag

1 buttons, and you would write in your name, right?

2 A Yes.

3 Q So you wrote in your name in the white space on the  
4 nametag, right?

5 A Yes.

6 Q That's your name, and then above that you wrote, Breonna,  
7 right?

8 A Yes.

9 Q And below that, you wrote Taylor.

10 A Yes.

11 Q And that's the same manner that you had marked up the --  
12 the George Floyd nametag that we talked about earlier, right?

13 It's a George on top, then your name, and Floyd underneath?

14 A Yes.

15 Q So on August 17, was the -- the next time you wore  
16 something Black Lives Matter related and it was a Breonna  
17 Taylor nametag?

18 A Yes.

19 Q On August 18, you had another meeting with Mr. Carlson,  
20 the store team leader?

21 A Yes.

22 Q Also at that meeting was the team member service  
23 generalist for the Mishawaka Store, Joe Smith, right?

24 A Yes.

25 Q Basically, the -- the store HR person was there, right?

1 That's her role? It was one of her roles, is that right?

2 A Yes.

3 Q And that meeting happened at the very start of your August  
4 18 shift, right?

5 A Yes.

6 Q You normally worked at 5:00, right? 5 to 9, I think you  
7 testified.

8 A Yes.

9 Q So at -- at 5:00, you got called into the store team  
10 leader's office. You had a meeting with Mr. Carlson and Ms.  
11 Smith and yourself; just the three of you, right?

12 A Yes.

13 Q And they asked you about what's the reason for wearing  
14 Breonna Taylor's name on your nametag?

15 A Yeah.

16 Q And you told them that -- that you identified with  
17 Breonna. That you basically were Breonna, right?

18 A Yes.

19 Q That you'd had -- you identified because the common  
20 experience of police brutality, being a victim of police  
21 brutality before, right?

22 A Yes.

23 Q Mr. Carlson asked you if this was the same issue that you  
24 had expressed when you wore George Floyd's name on your nametag  
25 and you said it was?

- 1 A Yes.
- 2 Q Mr. Carlson informed you it was not in compliance with the  
3 dress code, right?
- 4 A Yes.
- 5 Q This time, unlike June 8th, you declined to remove and put  
6 on a clean name tag with just your name, right?
- 7 A Yes.
- 8 Q And as a result of that, later in -- in the shift on  
9 August 18, that day, you were given a written counseling?
- 10 A Yes.
- 11 Q Written counseling is the lowest step, first step of any  
12 kind of discipline, right?
- 13 A Yes.
- 14 Q And after August 18, you went back to wearing a nametag  
15 with just your name?
- 16 A Yes.
- 17 Q And you didn't wear one with another name again, right?
- 18 A Yes.
- 19 Q And I think you testified on direct, your -- your only  
20 Black Lives Matter related activity after that, in the store,  
21 was, you testified you wore the bracelet that you showed. The  
22 small bracelet with the letters BLM on it, right?
- 23 A Yes.
- 24 Q Which was jewelry, correct?
- 25 A Yes.

1 MR. FERRELL: Your Honor, I'd like to take, if I could,  
2 maybe five minutes to see what additional questions I have,  
3 confer with counsel, and come back?

4 JUDGE SOTOLONGO: All right. Let's -- let's go off the  
5 record for five minutes.

6 MR. FERRELL: Then we'll come -- come back at --  
7 (Off the record at 11:45 a.m.)

8 JUDGE SOTOLONGO: Back on the record. All right.  
9 Go ahead. Mr. Ferrell, any -- any more questions?

10 MR. FERRELL: No more questions, Your Honor.

11 JUDGE SOTOLONGO: All right. Mr. Peterson?

12 MR. PETERSON: Thank you, Your Honor.

13 **REDIRECT EXAMINATION**

14 Q BY MR. PETERSON: Ms. London, just a few follow-up  
15 questions about some of the questions that Counsel asked you.  
16 Obviously -- obviously you're, you know, the police brutality  
17 was a -- was a component of your wearing the -- the Black Lives  
18 Matter mask as you testified on -- on cross-examination. Was  
19 there any other any other -- any other message you were trying  
20 to convey other than police brutality in wearing the mask?

21 A Yes. I was trying to convey that, like, wearing Black  
22 Lives Matter isn't only synonymous with police brutality, it is  
23 also like a representation and messaging for equality within  
24 the workplace, equality within schools. And just like equal  
25 treatment amongst your peers as, like, a black person.



1           MR. PETERSON: And you were asked also about the -- the  
2   who the individuals you wanted to start a conversation with  
3   by -- by wearing some of the -- wearing the Black Lives Matter  
4   mask or the buttons that you described. You recall that  
5   testimony?

6   A     Can you say that again? I couldn't hear you. Sorry.

7   Q     Yeah. You were asked about who -- the individuals you  
8   were hoping to start a conversation with by wearing the Black  
9   Lives Matter mask and the -- and the nametags that you had  
10  altered --

11  A     Yes.

12  Q     -- you recall that?

13  A     Yes.

14  Q     And you mentioned coworkers and employees. Do you -- did  
15  you include Whole Foods management amongst coworkers and  
16  employees?

17  A     Yes.

18  Q     And you were also asked some questions about your -- your  
19  Instagram post and -- and -- and who were you -- who you -- who  
20  you were asking -- asking to support, and the, you know, you  
21  went through the names of a number of victims of police  
22  brutality. You recall that?

23  A     Yes.

24  Q     And the transcript --

25           MR. PETERSON: Can I -- can I share the screen, Your

1 Honor?

2 JUDGE SOTOLONGO: Go ahead.

3 Q BY MR. PETERSON: Yeah. Do you see lines 7, 7 through 12  
4 is what -- what -- what Counsel was asking you about.  
5 Asking -- saying to "Whole Foods I'm asking you to support my  
6 life, to support Ahmoud Arbery's life, to support Tony McDade's  
7 life, Breonna Taylor's life, Sandra Bland's case to be  
8 opened -- reopened. And then after that, you see where it says  
9 to actually support the people that you are using in your  
10 marketing.

11 A Yes.

12 Q What did -- and -- and that was another -- that was  
13 another group that you were hoping Whole Foods would support;  
14 is that -- is that correct?

15 A Yes.

16 MR. FERRELL: Objection. Vague. I don't know what that  
17 means.

18 MR. PETERSON: Well, the sentence says, "to Whole Foods,  
19 I'm asking you to support my life". It has a series of -- of  
20 names that you've gone through. And then -- and then the last  
21 one, which you omitted reading, asking her about in your cross-  
22 examination, it says to actually support the people that you  
23 are using in your marketing.

24 Q BY MR. PETERSON: Do you see that?

25 A Yes.

1 Q And just to be clear, that is -- that is included in  
2 the -- in the groups or the lives or individuals that you're  
3 asking Whole Foods to support?

4 A Yes.

5 Q And who did you mean by the -- who did you mean by the  
6 people that you are using in your marketing?

7 A When Whole Foods has like pictures of, like, you know,  
8 like, when they're hiring, like, they use actual Whole Foods  
9 employees in those pictures.

10 Q Okay. And are some of those -- are -- are some of those  
11 employees black?

12 A Yes.

13 Q And that was some of the people that you wanted Whole  
14 Foods to support?

15 A Yes.

16 JUDGE SOTOLONGO: Where -- Ms. London, where are these  
17 pictures? When you say, "people you're using your marketing".  
18 Where are these photos that you're referring to posted?  
19 Where -- where are they seen or where are they visible?

20 THE WITNESS: These images could be seen, like, all around  
21 the store in terms of like -- like -- in, like, the deli and  
22 the meat department, in the produce, like, in the café area.

23 JUDGE SOTOLONGO: Yeah, the -- are these --

24 (Indiscernible, simultaneous speech)

25 JUDGE SOTOLONGO: So -- I'm trying to just get a clear my,

1     you know, my mind. Are these photographs that appear  
2     electronically in sort of -- it's kind of like in screens? Are  
3     they posters, are they -- how do you they -- and all these  
4     places you say they appear and how do they appear in these  
5     places? Are they exhibited?

6           THE WITNESS: They're posters or fliers or banners.

7           JUDGE SOTOLONGO: With -- with photos of employees.

8           THE WITNESS: Yes.

9           JUDGE SOTOLONGO: Okay. I see. All right. Go ahead.

10    Q     BY MR. PETERSON: Mr. Ferrell was asking you about your --  
11    some more detail about your conversation with Seth, Seth  
12    Carlson on -- on June 9th. And -- I believe he asked you about  
13    Mr. Carlson telling you his understanding of what -- what  
14    you're wearing, what you were wearing. The -- the, I guess at  
15    that point, you -- were you wearing a George Floyd -- were you  
16    wearing a George Floyd mask at that time, is that correct, on  
17    June 9th?

18    A     The pin or the -- or the Black Lives Matter facemask?

19    Q     Yeah, I -- I thought -- I thought you said you were  
20    wearing both, but maybe you can clarify. On this is the June  
21    9th.

22    A     Oh, on June 9th, I was wearing a Black Lives Matter  
23    facemask.

24    Q     And were you also wearing a pin?

25    A     Not that I remember.

1 Q Okay.

2 JUDGE SOTOLONGO: You had -- or you had a name tag on,  
3 correct? A pin with your nametag?

4 THE WITNESS: Yes.

5 JUDGE SOTOLONGO: But there was nothing written, like, the  
6 day before? You had no names printed on that -- on that day;  
7 is that correct?

8 THE WITNESS: Correct.

9 JUDGE SOTOLONGO: Okay, all right.

10 Q BY MR. PETERSON: And again, he was talking to you in --  
11 in part about the nametag that you had worn the day before, but  
12 also about the -- the Black Lives Matter facemask that you were  
13 wearing. Is that correct?

14 A Yes.

15 Q And you recall him saying what his understanding was of  
16 why you were -- why you were wearing those items?

17 A Yes.

18 Q And what do you recall him saying?

19 A He said he understood why I, like, wore the pin and why I  
20 wore the face mask.

21 Q Do you recall what the reasons he -- he stated as -- as  
22 his understanding?

23 A He understood that black people were at a disadvantage in  
24 a lot of situations, like, within the workplace and within  
25 police brutality.

1 Q Do you recall him specifically mentioning the -- the  
2 mistreatment of black individuals?

3 A Yes, he mentioned that.

4 Q Do you recall if he gave any more specifics about what he  
5 meant by that?

6 A That him -- I'm confused by the question.

7 Q Yeah, I think one of the questions on cross-examination  
8 was about him telling you that he understood you were wearing  
9 it as an act of solidarity and -- and representation of black  
10 individuals in this country. Was -- is that one of the things  
11 that --

12 MR. FERRELL: I don't believe that was my question.

13 MR. PETERSON: Oh, was as it not? My notes are -- are  
14 inaccurate.

15 JUDGE SOTOLONGO: Sustained, if that's the objection.

16 MR. FERRELL: Thank you, Your Honor.

17 Q BY MR. PETERSON: Do you recall if -- if Mr. Carlson  
18 understood anything about him understanding that you are  
19 standing in solidarity with black team members?

20 A He said he understood that wearing the Black Lives Matter  
21 facemask was me standing in solidarity with other black  
22 employees at the store.

23 Q And then lastly, Mr. Ferrell asked you about the June 22nd  
24 text that you had with one of your coworkers about -- where he  
25 asked if you had any more George Floyd pins; you recall that?

1 A Yes.

2 Q Have you had any discussions with that individual about  
3 wearing BLM pins as well?

4 A Yes, I did.

5 Q And what was the nature of those discussions?

6 A I talked with them about, like, after I had already, like,  
7 had to take the pin off and they said, like, well, they can't  
8 really, like, tell us all to take, like, Black Lives Matter  
9 pins or facemasks off.

10 Q And did that plan -- or did that -- did -- and -- and  
11 again, I guess you -- you've said nobody -- you never saw  
12 anyone actually wearing a pin?

13 A No.

14 Q Did you have any -- did -- did you -- and I guess you --  
15 you wore a -- you wore a BLM bracelet that you described  
16 earlier?

17 A Yes

18 Q Was there -- do you know why -- why didn't you wear a BLM  
19 pin?

20 A Because I thought it would have been against dress code.

21 Q Did you have any discussion with coworkers who shared that  
22 sentiment?

23 A Yeah. The person that gave me or made the Black Lives  
24 Matter bracelet, she told me that they thought that, you know,  
25 they would have said something to her about it, but they never

1 said anything to her about it. And I told her, like, you know,  
2 it's good that they didn't say anything to you and that you,  
3 like, don't have to worry about it. And she asked me -- she  
4 wanted to, like, make one for me. And I said, yeah.

5 Q And then, lastly, you -- you were asked about the August  
6 18th written -- written counseling that you had -- that you  
7 received on August 18th, you recall that?

8 A Yes.

9 Q And is -- you were able to -- is it correct that you were  
10 able to continue working, even though you refused to remove the  
11 pin, for the rest of that day?

12 A Yes.

13 Q But you also incurred a -- a discipline -- or the  
14 counseling that -- that you were asked about?

15 MR. FERRELL: Objection. Asked and answered. And it's  
16 not -- there's no allegation related to the discipline.

17 JUDGE SOTOLONGO: I -- I agree. Sustained.

18 MR. PETERSON: All right. I -- I have no further  
19 questions, Your Honor.

20 JUDGE SOTOLONGO: All right. Mr. Ferrell?

21 MR. FERRELL: Yes. I guess we could take down the -- I'm  
22 looking at an exhibit. Are --

23 MR. PETERSON: Oh, I'm sorry.

24 MR. FERRELL: -- using that exhibit?

25 **RECROSS-EXAMINATION**



1 Q BY MR. FERRELL: Ms. London, the Black Lives Matter  
2 facemask that you're pictured in in General Counsel's Exhibit  
3 and -- General Counsel's Exhibit 78, is that the same Black  
4 Lives Matter facemask that you wore outside of work?

5 A No.

6 Q You wore a different Black Lives Matter facemask outside  
7 of work?

8 A I didn't wear a black facemask outside of work.

9 Q So when you were out in the community, away from work, you  
10 didn't wear a Black Lives Matter facemask at all to show  
11 support for the community?

12 MR. PETERSON: Objection. This is exceeding the scope of  
13 cross-exam -- of redirect.

14 JUDGE SOTOLONGO: Sustained.

15 Q BY MR. FERRELL: You testified on redirect that you think  
16 Black Lives Matter is not just -- just about police brutality,  
17 but also related to issues of equality in -- in the workplace  
18 and schools; you recall talking about that?

19 A Yes.

20 Q In your view, then, is Black Lives Matter also related to  
21 issues of racism in housing in this country?

22 A Yes.

23 Q About gun control?

24 A Yes.

25 Q About voting rights?

- 1     A     Yes.
- 2     Q     About the banking system?
- 3     A     Yes.
- 4     Q     Now in your post, your Instagram post, it's Respondent's
- 5     Exhibit 78, the one you have a transcript of, it was right
- 6     after you were told you couldn't wear the George Floyd name pin
- 7     on June 8 of 2020. You didn't actually anywhere in that post
- 8     discuss schools, right?
- 9     A     Correct.
- 10    Q     You didn't discuss housing?
- 11    A     Correct.
- 12    Q     You didn't discuss gun control?
- 13    A     Correct.
- 14    Q     Nothing on voting rights?
- 15    A     Correct.
- 16    Q     Nothing on the banking system?
- 17    A     You're right.
- 18    Q     Nothing about trying to change any term or condition of
- 19    employment at Whole Foods, other than wanting to wear Black
- 20    Lives Matter messaging, right?
- 21    A     Yes.
- 22    Q     You did talk about protesting police violence against
- 23    African-Americans, right?
- 24    A     Yes.
- 25    Q     And that -- of that whole list, that's the only one you

1 discussed in that post from June 9 of 2020, right?

2 A Yes.

3 THE COURT REPORTER: Excuse me, Your Honor.

4 JUDGE SOTOLONGO: Yes.

5 THE COURT REPORTER: There is a Jill Smith in the waiting  
6 room.

7 JUDGE SOTOLONGO: Okay. Anybody know what Jill Smith is?

8 MR. FERRELL: She's potentially a witness for the  
9 respondent, so she can just stay in -- in the waiting room,  
10 please.

11 JUDGE SOTOLONGO: Okay. All right.

12 MR. FERRELL: No further questions, Your Honor.

13 JUDGE SOTOLONGO: All right. Mr. Peterson, any -- any  
14 questions?

15 MR. PETERSON: Yeah.

16 **FURTHER REDIRECT EXAMINATION**

17 Q BY MR. PETERSON: Just -- just one follow-up about the --  
18 the contents of your Instagram post, Ms. London. And you  
19 testified previously that you -- you -- you wanted Whole Foods  
20 to support the people that it's using its -- in its marketing.

21 A Yes.

22 Q You recall that? And those -- and those individuals or  
23 people in your workplace?

24 MR. FERRELL: Objection. This is one, asked and answered  
25 and this is not the scope of -- of recross.

1 MR. PETERSON: Well.

2 MR. FERRELL: I -- I was limited to and asked questions  
3 about those subject matters that she was claiming on redirect.

4 JUDGE SOTOLONGO: And this has been asked and answered.  
5 You know, it's -- it's -- it's becoming cumulative at this  
6 point. So sustained.

7 MR. PETERSON: All right. Nothing further, Your Honor.

8 JUDGE SOTOLONGO: Okay. Ms. London, you're excused.  
9 Please do not discuss -- thank you for your testimony, by the  
10 way. Please, do not discuss your testimony with any other  
11 witness or potential witness in this matter, until this whole  
12 case is over. All right? Thank you very much.

13 MR. FERRELL: Your Honor, I might ask for a -- a short  
14 recess to confer with Counsel about our plan for the rest of  
15 the day, and also given my coffee intake this morning for  
16 another restroom break. So if I might ask for 30 minutes past  
17 the hour in 20 minutes.

18 JUDGE SOTOLONGO: Actually, I tell you what. I need to  
19 grab some lunch myself. It is 12:10. Let's resume at -- at  
20 1:00 Pacific, which is -- at the hour. Okay? And then you can  
21 inform us in this time how -- how much do you anticipate going  
22 and how much for is this thing going?

23 MR. FERRELL: Thank you, Your Honor.

24 JUDGE SOTOLONGO: Let us resume at -- at the -- at the  
25 hour. So it will be 50 minutes from now.

1 MR. FERRELL: Thank you, Honor.

2 JUDGE SOTOLONGO: All right. Off the record.

3 (Off the record at 12:10 p.m.)

4 JUDGE SOTOLONGO: All right. Troy (phonetic throughout),  
5 we're -- we're looking at some football pictures. Troy, can  
6 you -- can you sort of -- there you go. Thank you. I going to  
7 get distracted during testimony watching a football game.

8 So. All right. So Mr. -- so Mr. Ferrell, please call  
9 your next witness.

10 MR. FERRELL: Respondent calls Jill Smith.

11 JUDGE SOTOLONGO: All right. Ms. Smith, would you please  
12 raise your right hand?

13 Whereupon,

14 **JILL SMITH**

15 having been duly sworn, was called as a witness herein and was  
16 examined and testified as follows:

17 THE WITNESS: I do.

18 JUDGE SOTOLONGO: Thank you. Could you spell out your  
19 name for us and give us your address -- your business address  
20 will suffice.

21 THE WITNESS: Yes. My name is Jill Smith. My first name  
22 is J-I-L-L. Last name is Smith, S-M-I-T-H. My business unit  
23 address is 4230 Grape Road, Mishawaka, Indiana 46545.

24 JUDGE SOTOLONGO: All right. Thank you.

25 Please proceed, Mr. Ferrell.



1 MR. FERRELL: Thank you, Your Honor.

2 **DIRECT EXAMINATION**

3 Q BY MR. FERRELL: Ms. Smith, do you mind if I call you Jill  
4 today?

5 A Yes, that's fine.

6 Q Jill, are you employed by Whole Foods Market?

7 A I am.

8 Q What is your position with Whole Foods?

9 A I am a team member services generalist.

10 Q Is that what is referred to sometimes by the acronym TMSG?

11 A Yes, that is correct.

12 Q Can you describe for the judge your responsibilities as a  
13 TMSG?

14 A Yeah. I am a human resources generalist, which means I  
15 handle the HR components of the business, such as benefits,  
16 compensation, policy review, and advisement.

17 Q What stores are you responsible for today, as a TMSG?

18 A Currently, I'm responsible for the South Bend, Indiana  
19 location and the Schererville, Indiana location.

20 Q And the South Bend location, is that -- does the address  
21 actually sit in Mishawaka?

22 A It does.

23 Q Mishawaka, Indiana, South Bend, same -- same store? We're  
24 talking about the same store, right?

25 A Yes, that's correct.



- 1 Q When were you first hired by Whole Foods, Jill?
- 2 A I started with Whole Foods in March of 2013.
- 3 Q What was your position that you were hired into?
- 4 A I was originally hired as a part-time cashier.
- 5 Q And what store was that?
- 6 A The same location. The South Bend, Mishawaka location.
- 7 Q How long were you -- did you remain a part-time cashier at
- 8 the Mishawaka location?
- 9 A For less than six months, about six months.
- 10 Q And what position did you go into?
- 11 A A customer service supervisor.
- 12 Q And when you say supervisor in that context, that's not --
- 13 that's an actual job classification; it's called supervisor,
- 14 right?
- 15 A Yes, that's correct.
- 16 Q It's not part -- it's not yet part of store leadership?
- 17 A No, no, it's -- it's like low level management, day-to-day
- 18 business floor transaction.
- 19 Q Hourly lead person type thing?
- 20 A Yes.
- 21 Q How long were you in the supervisor classification?
- 22 A Until about October of 2014. So a year, roughly.
- 23 Q What position did you move into next, after that
- 24 supervisor?
- 25 A I was the customer service associate team leader.

- 1 Q Is that sometimes -- is that an ATL --
- 2 A Yes, that's correct.
- 3 Q -- customer service?
- 4 A Yes.
- 5 Q Did you become the team leader for customer service at
- 6 some point?
- 7 A I did. In January of 2016.
- 8 Q Now from there, did you move into team member services?
- 9 A I did in January of 2017.
- 10 Q That's what's referred to, if I say TMS, that's team
- 11 member services, right?
- 12 A Yes, that's correct.
- 13 Q What position did you assume when you first went into TMS?
- 14 A When I first moved in team member services, I was a team
- 15 member services generalist. The same role now, but different.
- 16 A little bit of a different job responsibility.
- 17 Q Well, can you describe what was the different job
- 18 responsibility then versus now?
- 19 Q Yes. At that time we only had one location and there were
- 20 a lot more administrative day-to-day tasks than what there is
- 21 currently.
- 22 Q You said we only had one location. You were only
- 23 responsible for one location, is that right?
- 24 A Yes, that's correct.
- 25 Q And so were you, where -- where did you physically work



1 from? Where were you located?

2 A The South Bend, Mishawaka location.

3 Q Now, when did you pick up responsibility or add  
4 responsibility for the Schererville, Indiana location?

5 A That did not happen until July of 2021.

6 Q So in the summer of 2020, that we're going to be talking a  
7 lot about today.

8 A um-hum.

9 Q You were TMS generalist located in and solely responsible  
10 for the Mishawaka or South Bend, Indiana store?

11 A That is correct.

12 Q Who did you report to in the summer of 2020, in that role,  
13 was it TMSG at Mishawaka? Who did you report to?

14 A Yes, my team leader, my direct supervisor was James  
15 Mitchell (phonetic throughout) of regional team member  
16 services.

17 Q And he was located outside? Or where was he located; do  
18 you know?

19 A In Michigan, yeah. Away from where I was.

20 Q During that summer of 2020, who was the store team leader  
21 for that Mishawaka location?

22 A It was Seth Carlson.

23 Q For the entirety of 2020?

24 A Yes.

25 Q As a TMSG, what's your working relationship or reporting

1 responsibility to the store team leader, in this case Seth  
2 Carlson?

3 A At that time in 2020, I did not report to the store team  
4 leader, but we worked in tandem, hand-in-hand, so to speak. I  
5 advised, they would have collaborative discussion, we would  
6 make decisions together regarding team member relations policy,  
7 basic store operations.

8 Q You were a TMS or HR resource for -- for team leader; is  
9 that right?

10 A Yes.

11 Q We talked to you some about experience in the makeup of --  
12 of Mishawaka Store and its workforce. When did the Mishawaka  
13 Store open?

14 A In April of 2013.

15 Q And you said you were hired in March of 2013. So you've  
16 been at the Mishawaka store since its opening?

17 A Yes, that's correct.

18 Q In your experience, coming up through the ranks of the  
19 Mishawaka Store, what's -- how would you describe the political  
20 diversity of the team members at the Mishawaka Store?

21 A I would say it runs the spectrum from red, all the way to  
22 blue. We are located in an area of Indiana that is a little  
23 unique to the state. It's just our area in Indianapolis that  
24 tend to be left-leaning, or liberal leaning, blue leaning,  
25 however you want to phrase that. While the rest of the state,

1     probably 98 percent, is very conservative. That being said,  
2     the area is very liberal, but we still have a very large  
3     conservative population there as well.

4     Q     Has -- has that division given you cause or times, as a  
5     TMSG in Mishawaka, where you've had to police team members'  
6     political advocacy at the store?

7     A     Yes, it has.

8     Q     Can you describe some of those instances that you've had  
9     to -- to deal with in that -- in that respect?

10    A     Yeah, of course. For the store in general, I wasn't in  
11    the team member services role at the time, I was a team leader,  
12    but the 2016 election was pretty controversial. Lots of  
13    conversations with team members regarding not being able to  
14    wear politically sloganed shirts, politically sloganed hats,  
15    flair, which is just buttons on aprons, anything that was  
16    presidential or campaign oriented. The same thing in 2020.  
17    And we have also had issues with the breakroom and the  
18    breakroom television; people turning on Fox or CNN and people  
19    getting angry and having to really police like what was shown  
20    on television, just so we could have a neutral and peaceful  
21    environment that was welcoming to everyone. And that's kind of  
22    the history.

23    Q     So within Mishawaka, just to expand on what you were just  
24    talking about, on the blue side of things, 2016, 2020, did you  
25    have to talk to team members about wearing pro-Hillary Clinton

1 or pro-Joe Biden materials?

2 A Yeah.

3 Q And what about on the other side?

4 A Yes.

5 Q Did you have to talk to team members about pro-Trump or  
6 MAGA; Make America Great again?

7 A Yeah.

8 Q I want to talk to you now, Jill, about the actual  
9 complaint allegation for the Mishawaka store in this case. So  
10 first, I want to read you the -- the only paragraph, the only  
11 allegation that really relates to Mishawaka in the complaint.

12 MR. FERRELL: Counsel, I'm reading from paragraph 7-K of  
13 the complaint.

14 Q BY MR. FERRELL: So it's at Respondent's Mishawaka,  
15 Indiana store, case 25-CA-264904, about June 9, 2020, store  
16 team manager Seth Carlson informed employees that they were  
17 required to remove their Black Lives Matter masks, and that's  
18 all it says, and Jill, I'm going to ask you some questions  
19 about that statement. Jill, on or about June 9, 2020, do you  
20 recall store team leader Seth Carlson informing multiple  
21 employees that they were required to remove Black Lives Matter  
22 face masks that they were wearing in the store?

23 A No.

24 Q Jill, were there actually multiple employees at Mishawaka  
25 store at that time wearing Black Lives Matter face mask at all?

1 A No, there were not.

2 Q Did you actually ever see any team members at the  
3 Mishawaka store wearing Black Lives Matter face masks while  
4 working?

5 A Personally, no, I did not.

6 Q And when you say you didn't see anybody, does that include  
7 the charging party in this case from Mishawaka, Yuri London?

8 A Yes, I never saw Yuri wear a Black Lives Matter face mask.

9 Q And you know -- do you know Yuri London?

10 A I do, yes.

11 Q How many years have you -- did you work with Yuri?

12 A Oh quite a few, probably two or three at least.

13 Q I'm going to show you --

14 MR. FERRELL: Ms. Schaefer, if we could possibly call up  
15 General Counsel's Exhibit 78.

16 Q BY MR. FERRELL: Jill, what you're seeing is what's in  
17 evidence as General Counsel's Exhibit 78, it's a picture of Ms.  
18 London wearing a face mask that says Black Lives Matter. My  
19 question to you, Jill, is did you ever see Ms. London wearing  
20 this face mask while working in the Mishawaka store?

21 A No, I did not.

22 Q In your experience of policing people's various wearing on  
23 both sides of the aisle of political paraphernalia in the  
24 store, do you think if she was working as a cashier wearing  
25 this mask that it would've been reported to you by a team

1 member or a customer?

2 A Yes, probably by both.

3 MR. FERRELL: That's all, Ms. Schaefer. I'm done with  
4 General Counsel's 78.

5 Q BY MR. FERRELL: Jill, now are you aware of one occasion  
6 where Seth Carlson reported having a conversation with Yuri  
7 London about whether wearing a Black Lives Matter face mask  
8 violates the dress code?

9 A Yes.

10 Q And how are you aware of that conversation between Seth  
11 and Ms. London?

12 A He forwarded me his recap of the conversation in an email.

13 Q By email, I'm sorry?

14 A Yes.

15 Q Was that a practice that Mr. Carlson had of forwarding you  
16 FYI emails so to keep you in the loop?

17 A Yes, constantly.

18 Q I want to ask you about -- now Jill, about June 8, 2020.  
19 Do you recall attending a meeting with Seth Carlson and Yuri  
20 London in the store team leader office?

21 A Yes, I do.

22 Q Was there anyone else present for that meeting?

23 A There was not.

24 Q Do you recall what the purpose of the meeting was?

25 A Yes. We were checking in with Yuri as she had some

1 personal situation come up; we were making sure she was okay,  
2 and we needed to discuss her name badge with her, as it had  
3 George Floyd written on it, along with her actual name, which  
4 was a violation of dress code policy.

5 Q And can you describe to the judge what the name tag looked  
6 like and how Ms. London had modified it, what it looked like as  
7 modified.

8 A Yeah. In 2020 our name tags were buttons, and through the  
9 center of the button is a white strip where the team member  
10 would put their name, on the top was a green pattern and on the  
11 bottom was a green pattern. And on the button it was written  
12 on the top in the first green section George, in the white it  
13 said Yuri, and on the bottom of the green section it said  
14 London.

15 Q London or Floyd? Is it George London or George Floyd?

16 A Oh, Floyd, I'm so sorry. I'm so sorry. Yes, it said  
17 George Floyd. I apologize.

18 Q Now --

19 JUDGE SOTOLONGO: So in other words, just so my -- current  
20 understanding, at -- during this time, Ms. Smith, the name --  
21 the pin -- there was a pin that had a stripe and the stripe,  
22 the employees wrote their own names, is that the way it worked?

23 THE WITNESS: Yes, that's correct.

24 JUDGE SOTOLONGO: But there was a space on this pin to  
25 write something else if they wanted to, as long as they chose

1 to do that.

2 THE WITNESS: Technically, the pin had enough space on it,  
3 if you wanted to write not in the white boundary you could,  
4 yes.

5 JUDGE SOTOLONGO: Okay. Very good. Please proceed.

6 Q BY MR. FERRELL: And Jill, just to make sure that point is  
7 clear, team members were not supposed to write other things  
8 above the white stripe on the name tag, is that right?

9 A Yes, of course. Only your name in the white spots -- the  
10 white spot.

11 Q You mentioned you were also -- another purpose of the  
12 meeting besides the name tag, which we're going to get to, was  
13 a discussion to check in with Ms. London to make sure she was  
14 okay. The personal issue you referenced that she was having,  
15 is that in relation to a death that had occurred in her family?

16 A Yes. There had been someone who had passed away.

17 Q Going to the discussion about the name tag, how was that  
18 brought to the attention of store leadership, Mr. Carlson, as  
19 well as yourselves?

20 A It was reported to store leadership through a team member  
21 in the store, I'm not sure exactly who, and then he let me know  
22 we needed to have a conversation with Yuri about dress code.  
23 He let me know that day, that June 8th; it was reported on June  
24 7th, I believe.

25 Q And when you say he let me know, are you referring to Mr.



1 Carlson?

2 A I am.

3 Q (Audio interference)?

4 A Seth, yes.

5 MR. FERRELL: I got an echo background. Is it worked out?  
6 Sounds like it's worked out. Okay. I'm going to continue  
7 then.

8 Q BY MR. FERRELL: What -- at that -- at that meeting, in  
9 the store team leader office, what did Ms. London say about why  
10 she had written George Floyd on her name tag, on the name spot?

11 A That she wanted to represent her community in light of the  
12 current situation that was going on surrounding George Floyd.  
13 As an African-American, she identified with George Floyd, she  
14 had been the victim of police brutality and she wanted to show  
15 her support for her community.

16 Q Did she expand at all during that meeting about what she  
17 meant by her community?

18 A African-American community.

19 Q What was Mr. Carlson's response to Ms. London's  
20 statements?

21 A He told her he understood and that he emphasized and  
22 agreed with her personally, but at work we do have a dress code  
23 and the name tags need to represent your name only, and he  
24 would need her to swap out the name tag with one that just said  
25 Yuri.

1 Q How did Ms. London respond to that on June 8th?

2 A She was upset by it. She said she would just erase George  
3 Floyd from the name tag and Seth encouraged her not to do that  
4 but rather get -- just get a new one, and she swapped the name  
5 tag and left the office I believe at that time.

6 Q And when you say she swapped the name tag and left the  
7 office, she put on a new name tag that had only her name, is  
8 that right?

9 A She took one with her to put her name on, yes.

10 Q After that meeting, do you know if Ms. London stayed and  
11 worked?

12 A She did not. We found out later that she had left the  
13 office, clocked out and then left for her -- from her shift.

14 Q And her shift -- was her shift over?

15 A No, it had just started.

16 Q Did she have permission from anyone to clock out and  
17 leave?

18 A No, she didn't let anyone know she was leaving.

19 Q Was she issued any discipline at all for leaving early?

20 A No, she was not.

21 Q Was she issued any discipline at all for having the George  
22 Floyd written on her name tag?

23 A No, she was not.

24 Q After this date, did we have any further instances -- did  
25 you have further instances where Ms. London wore the George

1 Floyd name tag -- a name tag that said George Floyd on it at  
2 the store?

3 A That said George Floyd? No, we did not.

4 Q Jill, I want to show you what's being marked for  
5 identification as Respondent's Exhibit 79. This is -- Ms.  
6 Schaefer will document that it's Bates stamp WFM 789.

7 **(Respondent Exhibit Number 79 Marked for Identification)**

8 JUDGE SOTOLONGO: So this is a new exhibit, Mr. Ferrell?

9 MR. FERRELL: It is, Your Honor.

10 JUDGE SOTOLONGO: Okay.

11 Q BY MR. FERRELL: Jill, are you able to see the document  
12 that's being shared with you there?

13 A Yes, I am.

14 MR. FERRELL: And Ms. Schaefer, if you could just scroll  
15 up to the top so the witness could see the top, and scroll down  
16 a little bit so she can see the bottom of the text -- there we  
17 go.

18 Q BY MR. FERRELL: So Jill, looking at what's been marked as  
19 Respondent's Exhibit 79, do you recognize it?

20 A I do.

21 Q What is it?

22 A My recap of the conversation on that day, on the 8th.

23 Q And was it your practice to prepare recaps or summaries  
24 of -- of meetings?

25 A Yes, it was.

1 Q Can you describe what exactly the practice was when you  
2 would do that?

3 A Just to keep a record of the conversation so that we knew  
4 what was said, and so that we could keep it for followup. We  
5 were very big on having followup conversations to ensure that  
6 everything was touched upon with the team member.

7 Q And is that a practice with respect to meetings or  
8 interviews with team members?

9 A Yes, team members, yes.

10 Q Looking at this Respondent's Exhibit 79, it's from -- I  
11 see it's from June 8 of 3:12 p.m., written by you to Mr.  
12 Carlson.

13 MR. FERRELL: If we scroll up to the top, Ms. Schaefer.  
14 There we go.

15 Q BY MR. FERRELL: Is that correct?

16 A I'm sorry, could you repeat that one more time?

17 Q It looked like it is an -- this is an email you sent to  
18 Mr. Carlson at 3:12 p.m. on that date June --

19 A Yes.

20 Q -- June 8th?

21 A Yes, that is correct. I'm sorry.

22 Q But in the first line it looks like you noted when the  
23 actual meeting started --

24 A Yes.

25 Q -- with Ms. London, right?

1 A Yup. That's correct.

2 Q Is that the 12:40 p.m. discussion?

3 A Yes.

4 Q And you mentioned she left, and it looks like it's noted  
5 in the last line of your second paragraph.

6 MR. FERRELL: Ms. Schaefer, if you scroll down just a  
7 little bit.

8 Q BY MR. FERRELL: That she left the room at 12:52. Is that  
9 what you were referring to, is that when the meeting ended?

10 A Yes, that's correct.

11 Q And it's immediately thereafter it looks like she clocked  
12 out, the last line, it says 12:57 p.m., is that right?

13 A Yes.

14 Q Jill, was there any discussion during this meeting on June  
15 8 about the wearing of a Black Lives Matter face mask?

16 A No, there was not.

17 MR. FERRELL: Your Honor, I'd move to admit Respondent's  
18 Exhibit 79 into evidence.

19 JUDGE SOTOLONGO: Any objection or voir dire?

20 MR. PETERSON: No, Your Honor.

21 JUDGE SOTOLONGO: All right. So Respondent's (sic) 78 and  
22 79 is admitted.

23 **(Respondent Exhibit Number 79 Received into Evidence)**

24 Q BY MR. FERRELL: Jill, I want to move now to the next day  
25 on June 9 of 2020, and let me show you --

1 MR. FERRELL: Ms. Schaefer, if you could show the witness  
2 what we're going to mark as Respondent's 80, it's the page,  
3 Exhibit beginning WFM page 802 from our production.

4 **(Respondent Exhibit Number 80 Marked for Identification)**

5 Q BY MR. FERRELL: And Jill, I want to give you a moment.

6 MR. FERRELL: Ms. Schaefer, if you could just scroll  
7 through it a little so I would make sure the witness has a  
8 chance to see it since she doesn't always see what we display.  
9 And we're on -- I think there's one more page then we'll --  
10 there we go, we got it all. And if you scroll all the way back  
11 up to the top now, Ms. Schaefer, thank you.

12 Q BY MR. FERRELL: Jill, looking at what's been marked for  
13 identification as Respondent's Exhibit 80, looking at the top  
14 here, do you recognize this?

15 A Yes, I do.

16 Q What do you recognize it to be?

17 A It's an email that the store team leader, Seth Carlson,  
18 sent to myself and the rest of the store leadership team as  
19 just an FYI.

20 Q Is this consistent with the practice you were talking  
21 about a moment ago where Mr. Carlson would forward you any  
22 other emails you needed to know about in your function as the  
23 TMSG?

24 A Yes.

25 Q So if we turn --

1 MR. FERRELL: Ms. Schaefer, if you could. If you scroll  
2 down to look at the bottom of 804 and the top of page 805,  
3 which is the third and fourth pages of the exhibit.

4 MS. SCHAEFER: I just uploaded a copy of the exhibit since  
5 it's long if anybody wants to scroll along, it's just not  
6 marked yet.

7 MR. PETERSON: Is that in the chat?

8 MS. SCHAEFER: Yeah, I just put it in the chat.

9 I'm sorry, Mr. Farrell, what page did you want to go to?

10 MR. FERRELL: The bottom half of 804 which is the third  
11 page of the exhibit. It's beginning from Seth Carlson, Monday,  
12 June 8, 2020 at 3:20 p.m.

13 Q BY MR. FERRELL: And -- and Jill, my question to you is  
14 this email starting right here that he -- Mr. Carlson is part  
15 of the chain he forwarded to you and what follows on the next  
16 page. Do you recognize that to be a recap of the same June 8th  
17 meeting that you attended with Mr. Carlson and Ms. London?

18 A Yes, that is correct. I do.

19 Q And in fact I think it references -- Mr. Carlson's  
20 summary -- it says in the second line in the email he says,  
21 Jill Smith, a brief recap is attached, and then this was Mr.  
22 Carlson's summary. Is that right?

23 A Yes, that's correct.

24 Q Have you reviewed Mr. Carlson's summary of that same  
25 meeting that you attended with Ms. London and Seth?

1 A Yes, I have.

2 Q Did you find his -- Mr. Carlson's summary to also be  
3 accurate of that meeting?

4 A Yes.

5 Q And then beginning at the top half of page 804 which is  
6 the third page of the exhibit -- I'm sorry, beginning on the  
7 second page 803 and continuing to the top half of 804 --

8 MR. FERRELL: Yes, there. Thank you.

9 Q BY MR. FERRELL: -- this is from Mr. Carlson on June 9 of  
10 2020. Do you see that?

11 A Yes, I do.

12 Q Do you know -- in this email that Mr. Carlson is  
13 forwarding you, do you know what this email is describing?

14 A Yes. This was the followup conversation with Yuri the  
15 next day to touch base with her.

16 Q And what would -- do you know what the need to touch base  
17 was, why there was the need for this meeting initially?

18 A Yeah. Specifically because she left the other meeting and  
19 we wanted to make sure that she was okay and to close out that  
20 conversation. It's our practice to follow up with team members  
21 any time we have really any kind of conversation of a merit or  
22 matter where someone is upset where we may not come to a  
23 resolution.

24 Q In this particular case, it says in the second line, I'm  
25 looking here, I had a female witness -- this is Mr. Carlson



1 speaking -- I had a female witness in the office, ATL Jamie  
2 Porter (phonetic throughout). Do you know who that is?

3 A Yes. That is the grocery associate team leader at the  
4 Mishawaka location.

5 MR. FERRELL: If you scroll down to the next page, it's on  
6 page 804, Ms. Schaefer, just the end of this email -- yes.  
7 There you go.

8 Q BY MR. FERRELL: Jill, I wanted to direct your attention  
9 to the last bullet above thank you Seth, it begins Yuri thanked  
10 me, do you see that?

11 A Yes I do.

12 Q And then I asked if she would need to take off her Black  
13 Lives Matter face mask and then it says I stated yes and that  
14 she could wear it on her breaks and when she was not on the  
15 clock. She thanked me again and I thanked her. Do you see  
16 that?

17 A I do.

18 Q Now earlier you said you were aware of a report that Mr.  
19 Carlson had a conversation -- a single conversation with Ms.  
20 London about wearing a Black Lives Matter face mask and whether  
21 it complied with the dress code. Is this that reference -- or  
22 is this the email you were referring to?

23 A Yes, it is.

24 Q So it would've been from that June 9 meeting of 2020.

25 A Yes, that's correct.

1 MR. FERRELL: Your Honor, I'd move Respondent's Exhibit 80  
2 into evidence.

3 JUDGE SOTOLONGO: You may -- 80? Yes.

4 Mr. Peterson, any objection or voir dire?

5 MR. PETERSON: Yeah, just some quick voir dire.

6 Do you mind not sharing the screen for a moment? Thank  
7 you.

8 **VOIR DIRE EXAMINATION**

9 Q BY MR. PETERSON: So Ms. Smith, as I understand it you  
10 were -- you were forwarded a copy of this email?

11 A Yes, that's correct.

12 Q You weren't at the meeting yourself on June 9th?

13 A I was not.

14 Q And you don't believe that this email is a verbatim  
15 recitation of what was said during that meeting, do you?

16 A I believe it's as close as could be verbatim knowing Seth  
17 Carlson and his detailed note-taking skills.

18 Q Oh, okay.

19 MR. PETERSON: No objections.

20 JUDGE SOTOLONGO: Respondent's Exhibit 80 is admitted.

21 **(Respondent Exhibit Number 80 Received into Evidence)**

22 MR. FERRELL: Thank you, Your Honor.

23 **RESUMED DIRECT EXAMINATION**

24 Q BY MR. FERRELL: Jill, after July 9, was there another  
25 occasion or an instance at the Mishawaka store involving or

1 related to the wearing of Black Lives Matter messaging?

2 A Did you mean June 9th -- after June 9th?

3 Q I'm sorry --

4 A Not July.

5 Q -- I meant June 9, yes after June 9, sorry. Thank you for  
6 the correction.

7 A I'm sorry, what was the rest of the question? I  
8 apologize.

9 Q On June 9, do you recall there being another incident  
10 where you had discussions about a team member wearing -- or Ms.  
11 London, actually, wearing anything related to Black Lives  
12 Matter?

13 A In August there was another issue with the name badge, but  
14 not a face mask.

15 Q Not a face mask, a name badge?

16 A Yes.

17 Q And what was the issue in August with the name badge?

18 A She was working with the name badge that said Breonna Yuri  
19 Taylor, in the same formation as the George Floyd name tag, but  
20 with Breonna Taylor.

21 Q So Breonna written above her actual name and Taylor  
22 written below her actual name?

23 A Yes, that's correct.

24 Q In -- so she wore this at the store and how is it you came  
25 to be involved in that incident?

1 A Yes. The associate store team leader Steve Patterson was  
2 working the evening of -- might be the 17th, I'll have to look  
3 at the dates. He went to talk to Yuri. She had been out of  
4 work for quite some time; she had had some paid time off and  
5 then was off for an extended amount of time, and so he wanted  
6 to just see how she was doing and check in with her and he  
7 noticed in that interaction that her name badge read Breonna  
8 Yuri Taylor.

9 Q And I want to show you what's been marked for  
10 identification as Respondent's Exhibit 81.

11 MR. FERRELL: And Ms. Schaefer, this is the single page  
12 WFM 755.

13 MS. SCHAEFER: (No audible response).

14 Q BY MR. FERRELL: Jill, looking at what's before you that  
15 has been marked as Respondent's Exhibit 81 on August 17, 2020.  
16 Tell me if you recognize it.

17 A Yes, I do.

18 Q What is it?

19 A It's an email from associate store team leader Steve  
20 Patterson to regional team member services letting them know  
21 about the name tag.

22 Q And are you copied on this email?

23 A I am.

24 Q And this is -- is this the email you were referring to  
25 about his report of Ms. London wearing a Breonna Taylor name

1 tag?

2 A Yes. That is correct.

3 MR. FERRELL: Your Honor, I'd move to admit Respondent's  
4 Exhibit 81.

5 JUDGE SOTOLONGO: Any objection or voir dire?

6 MR. PETERSON: No, Your Honor.

7 JUDGE SOTOLONGO: All right. Respondent's 81 is admitted.

8 **(Respondent Exhibit Number 81 Received into Evidence)**

9 Q BY MR. FERRELL: So Jill --

10 MR. FERRELL: And I'm done with the exhibit, Ms. Schaefer,  
11 thank you.

12 Q BY MR. FERRELL: Jill, after Mr. Patterson, Steve  
13 Patterson, made his report on August 17, did you have an  
14 occasion where you met with Ms. London about this?

15 A Yes, on the 18th with store team leader Seth Carlson.

16 Q When did that --

17 A In the evening.

18 Q In the evening. You were called about what time?

19 A Probably about 5:00.

20 Q All right. Is that when Ms. London's shifts would  
21 typically start?

22 A Yes. She did work some days where it was earlier, but  
23 mostly her shifts started about 5 or 6 p.m.

24 Q Where did the meeting take place?

25 A In the store team leader office.

1 Q Was anyone else present beside yourself, Mr. Carlson and  
2 Ms. London?

3 A No, they were not.

4 Q Can you describe for the judge what was said at that  
5 meeting?

6 A Yeah. So we pulled Yuri when she clocked in her for  
7 shift. We asked her to come in. We asked how she was, we  
8 hadn't seen her; she had been out with coronavirus, she had  
9 been gone for an extended amount of time, so we were checking  
10 in with her, talked to her about getting paid for that time.  
11 And then Seth asked her about her name badge and she said that  
12 she wanted to wear the name badge. She felt that she needed to  
13 represent her community. She felt that in June when she took  
14 off George Floyd's name she had not been representing her  
15 community well and that didn't sit well with her and she  
16 wouldn't do that again.

17 Q I want to show you what's been marked for identification  
18 as Respondent's Exhibit 82.

19 **(Respondent Exhibit Number 82 Marked for Identification)**

20 MR. FERRELL: Ms. Schaefer, if you could show the witness  
21 the two-page exhibit beginning with WFM 773.

22 Q BY MR. FERRELL: So Jill, take a look at this and let us  
23 know if you need us to scroll down for the entire thing or if  
24 you recognize it.

25 A No, I recognize this.

1 Q What is it?

2 A This is my -- my notes from that specific meeting.

3 Q From the August 18 meeting with Ms. London?

4 A Yes.

5 Q Now you've got -- over on the far left of this, you have  
6 an S colon, a Y colon --

7 A Um-hum.

8 Q -- and what does that indicate? What is that notation?

9 A Yeah, the S colon represents Seth Carlson and the Y is  
10 Yuri London.

11 Q So after the S colon is what your notes indicate Mr.  
12 Carlson said?

13 A Yes.

14 Q And after the Y colon is what your notes indicate Ms.  
15 London said?

16 A Yes, that is correct.

17 Q And I think --

18 MR. FERRELL: Ms. Schaefer, if you'd scroll down a little  
19 bit --

20 Q BY MR. FERRELL: There's a Jill colon. Do you see that?

21 A Yeah.

22 Q Does that represent what you said at the meeting?

23 A Yes, that is correct.

24 MR. FERRELL: And if you go back up a little bit, Ms.

25 Schaefer. Oh, sorry -- not that far I don't think. There you

1 go. Oh, stop.

2 Q BY MR. FERRELL: And do you see where it says Y colon, I  
3 felt she needed to represent Breonna because nothing had been  
4 done in her case. As a black woman she identifies as Breonna  
5 because she's also been the subject of unprovoked police  
6 brutality. You see where it say -- where your notes say that?

7 A Yes.

8 Q Is that what you were describing a moment ago when you  
9 said that Ms. London indicated she felt like she had not  
10 represented her community well before and she wouldn't do that  
11 again?

12 A Yes.

13 Q I think below it, two lines down there's a Y colon  
14 indicating Ms. London, and you said that -- or she said, yes it  
15 was the same, thought she had stepped down instead of facing  
16 consequences --

17 A Um-hum.

18 Q -- regarding not wearing -- previously taking off the  
19 George Floyd pin. Is that right?

20 A Um-hum. That's correct.

21 MR. FERRELL: All right. Your Honor, at this time we'd  
22 move to admit Respondent's Exhibit 82.

23 JUDGE SOTOLONGO: Could you move to the top? What's the  
24 date of this email? Oh, this is August 18th, okay.

25 Any objection?



1 MR. PETERSON: Just a quick voir dire, Your Honor.

2 JUDGE SOTOLONGO: Go ahead.

3 **VOIR DIRE EXAMINATION**

4 Q BY MR. PETERSON: So Ms. Smith, you -- this meeting  
5 occurred around 5 p.m.?

6 A Yes.

7 Q Is that right?

8 A Yes.

9 Q And it looks like you recorded the notes about two hours  
10 later. Is that right?

11 A Well, I wrote them on paper. This was my scribe of that  
12 via email, once all of the conversations had concluded.

13 Q Were you -- you were taking notes during the meeting?

14 A Yes.

15 Q And you did those by hand and then you transcribed your  
16 handwritten notes?

17 A Yes.

18 Q I imagine you try to take good notes, but I don't imagine  
19 you're a court reporter or have the ability to take word-for-  
20 word verbatim notes. Is that fair to say?

21 A Though I'm not a court reporter, I do my very best. This  
22 is a part of my job that I do quite often.

23 MR. PETERSON: No objections, Your Honor.

24 JUDGE SOTOLONGO: All right -- excuse me. Respondent's  
25 Exhibit 82 is admitted.

1       **(Respondent Exhibit Number 82 Received into Evidence)**

2           MR. PETERSON: Counsel, can you put a copy of that in  
3       the -- in the chat?

4           MS. SCHAEFER: Sure.

5                               **RESUMED DIRECT EXAMINATION**

6       Q     BY MR. FERRELL: Now Jill, coming out of the August 18  
7       meeting -- or at the August 18 meeting, you had this  
8       discussion --

9       A     Um-hum.

10      Q     -- and Ms. London as you described said she didn't want to  
11      do that again. She didn't feel good about taking off the  
12      George Floyd name tag.

13      A     Um-hum.

14      Q     What happened as a result of that -- after that  
15      discussion?

16      A     Yes. We took a break, gave her -- we asked her to take a  
17      break because -- just to let everybody be in a good, calm,  
18      neutral space, came back, continued the discussion. She asked,  
19      you know, again, about the name tag and told us she wouldn't be  
20      taking it off. We let her know about dress code and that we  
21      would have to hold her accountable if she wasn't going to be in  
22      dress code, and then ultimately she was issued a counseling  
23      statement, which is a written form of documentation in the  
24      midwest, it's like the lowest level of written documentation.

25      Q     Now, that was issued on what date?



- 1     A     August 18th.
- 2     Q     The same night?
- 3     A     Yup.
- 4     Q     Okay. After August 18, did Ms. London wear a name tag
- 5     with -- other than her own name again?
- 6     A     After the date of August 18th, no, she never did.
- 7     Q     And going back to after, you know, June 9, did you ever
- 8     have an issue -- an incident where Ms. London was working in
- 9     other than a dress code compliant face mask?
- 10    A     No.
- 11    Q     A compliant, neutral face mask?
- 12    A     No, we didn't have any other issue.
- 13    Q     All right. Did anyone else at the Mishawaka store ever
- 14    wear, as far as you're aware, a Black Lives Matter face mask at
- 15    that store?
- 16    A     No, they did not.
- 17    Q     Now, Jill, when it comes to the Black Lives Matter
- 18    movement, are you familiar with the Black Lives Matter
- 19    movement?
- 20    A     I am, yes.
- 21    Q     Do you support the Black Lives Matter movement?
- 22    A     I do, yes.
- 23    Q     How have you expressed your support or activities in
- 24    support of the Black Lives Matter movement?
- 25    A     Yeah. I --

1 MR. PETERSON: Objection. What's the relevance of this  
2 line of questioning?

3 JUDGE SOTOLONGO: Mr. Ferrell?

4 MR. FERRELL: Your Honor, her understanding of the Black  
5 Lives Matter movement and what it represents and what it stands  
6 for as a supporter of the Black Lives Matter, one of the issues  
7 what's the -- it objectively understood to mean, what does in  
8 this case Ms. Smith understand it to mean and be about, and is  
9 she supporting it.

10 JUDGE SOTOLONGO: But would her opinion reflect her  
11 subjective understanding of what it means and not objective?

12 MR. FERRELL: It will reflect her understanding, but there  
13 is an issue -- I mean, it's -- some -- there's evidence that  
14 needs to be introduced I will grant you about what the general  
15 public understands, for sure, but there is also what did the  
16 employees communicate their understanding was, what they were  
17 trying to -- and what did the employer understand and to be  
18 trying to communicate.

19 JUDGE SOTOLONGO: All right, I'll allow it, but this is  
20 going be strained. Go ahead.

21 MR. FERRELL: Thank you.

22 Q BY MR. FERRELL: Jill, what activities did you take in  
23 support of Black Lives Matter?

24 A Yeah, my family and I, we have donated, we don't go to  
25 rallies or protests because it was during the pandemic and I

1 have small children. We have Black Lives Matter gear,  
2 bracelets, coffee mugs, anything really that we could get, t-  
3 shirts at that time to support, to show support.

4 Q Did you have a Black Lives Matter face mask yourself?

5 A No, we couldn't get them. They were sold out.

6 Q They were sold out.

7 A Yes.

8 Q Now did you ever wear your Black Lives Matter message in  
9 your paraphernalia or wear it into the store or bring it to the  
10 store?

11 A No, I did not.

12 Q Why not?

13 A I mean, firstly it's a policy violation; it would violate  
14 dress code, we don't allow any kind of messaging that's not  
15 Whole Foods Market approved, but then also personally I am a  
16 human resources generalist, I talk to people all day who feel  
17 differently than I do on sociopolitical issues and I don't want  
18 to alienate them from coming to talk to me; I would like to be  
19 neutral in their eyes so that they feel comfortable.

20 Q Now, in your personal support of Black Lives Matter, why  
21 is it such a personal issue -- a point of support for you?

22 A My husband is Africa-American and my children are  
23 biracial.

24 Q Now, what -- when you're engaging in support and your  
25 understanding of Black Lives Matter, what do you understand the

1 purpose to be? What is it about?

2 Q Yeah. My understanding of Black Lives Matter is that it  
3 is a need for reform at both the social and political levels.  
4 It does talk about police brutality, it is about unfair  
5 policing practices, as well as institutionalized racism and  
6 racism at every level of institution, and it asks for a reform  
7 of those institutions.

8 Q In your understanding, is it a call for political and  
9 social reform?

10 A Yes.

11 Q What do you understand Black Lives Matter movement to have  
12 to do, if at all, with any term or condition of employment at  
13 Whole Foods Market?

14 A I do not understand it to do with employment.

15 Q Are you aware of anything -- are you aware of Ms. London  
16 ever saying that her support of Black Lives Matter movement was  
17 directed at trying to change any term or condition of  
18 employment at Whole Foods Market?

19 A No.

20 MR. FERRELL: No further questions at this time, Your  
21 Honor.

22 JUDGE SOTOLONGO: Mr. Peterson?

23 MR. PETERSON: Your Honor, can we take a five or ten-  
24 minute break?

25 JUDGE SOTOLONGO: All right. It is now 1:45, let's take

1 ten minutes.

2 MR. PETERSON: Thank you.

3 MR. FERRELL: Thank you, Your Honor.

4 JUDGE SOTOLONGO: All right.

5 (Off the record at 1:45 p.m.)

6 JUDGE SOTOLONGO: Lets go back on the record.

7 Go ahead, Mr. Peterson.

8 MR. PETERSON: Thank you, Your Honor.

9 **CROSS-EXAMINATION**

10 Q BY MR. PETERSON: Good afternoon, Ms. Smith. I'm Matt  
11 Peterson, I'm the attorney for the LRB. I just have some  
12 followup questions for you about your testimony today.

13 A Okay.

14 Q You understood Ms. London as wanting to stand up for her  
15 community in wearing the Black Lives Matter face mask and the  
16 pins and buttons you described?

17 A I can only speak to the name badges. I never heard her  
18 reference that in regards to the face mask, it was only  
19 referenced in regards to the George Taylor (sic) button and the  
20 Breonna Taylor button.

21 Q Right. Even at -- even at the meetings where Seth  
22 discussed the face mask with her, is that right?

23 A I was not physically present, that was correct.

24 Q But you are aware that she was wearing a Black Lives  
25 Matter face mask and was spoken to about that?

1 A Just in that email, the last line of that email.

2 Q You didn't have any conversations with Seth about the  
3 Black Lives Matter mask, specifically?

4 A No, it was more substantive to the buttons and the issue  
5 that had preceded resolving.

6 Q Would the -- in your view, would the Black Lives Matter  
7 face mask been permissible under the dress code?

8 A No -- no lettering of any kind that was not Whole Foods  
9 Market approved would have been permissible.

10 Q Were your employees wearing other masks prior to -- prior  
11 to June of 2020 with lettering and messages on them?

12 A Yes, and they were asked to take them off. For example,  
13 sports teams was a big one, specifically with our meat-cutting  
14 department.

15 JUDGE SOTOLONGO: What was the message again?

16 THE WITNESS: It was sports teams, NFL teams specifically,  
17 like the Bears or -- that's what their face masks were.

18 Q BY MR. PETERSON: Were you aware of an employee wearing a  
19 face mask with their name written on it?

20 A With their name? No, I was not.

21 Q Did you see Seth wear his I Love South Bend face mask?

22 A I'm trying to recollect, I'm sorry. If that happened, it  
23 would have been right in the beginning of the pandemic,  
24 probably in March or April before we told team members the face  
25 masks need to be in dress code.



- 1 Q And you don't remember that one way the other?
- 2 A Specifically to like a date and a time, no, I do not.
- 3 Q But you --
- 4 A I'm sorry.
- 5 Q But you do remember him wearing that mask?
- 6 A It could have happened early in the pandemic, yes, when we
- 7 were first rolling in masks, that could've happened.
- 8 Q You don't have specific recollection of it, though?
- 9 A To be honest, no. It was a very long time ago. There
- 10 wasn't a lot tension around the face masks in March and April
- 11 (indiscernible, simultaneous speech) memory.
- 12 Q You recall Ms. London pointing out the fact that Whole
- 13 Foods allows pride messaging but didn't allow -- didn't allow
- 14 the Black Lives Matter or the names of the pins and buttons
- 15 that you described?
- 16 A Yes, I am aware of that.
- 17 Q Did you think she had a good point?
- 18 A At the time, yes, I agreed, and both Seth and I agreed
- 19 with her, I think it's stated in the emails at some point.
- 20 Q And in one of those emails she references employees who
- 21 were fired by Whole Foods Market for wearing Black Lives Matter
- 22 face masks?
- 23 A Um-hum.
- 24 Q Do you recall her bringing that up?
- 25 A I do, yes.

1 Q Did you know what she was talking about at the time on  
2 August 18th?

3 A In a general sense, not a specific sense. I'd obviously  
4 seen the news surrounding it, but we had not had anything like  
5 in my store or in the midwest region to my knowledge.

6 Q Had you received any reports from regional leadership or  
7 anyone higher that there was Black Lives Matter issues going on  
8 at other stores?

9 A I did not, no.

10 Q Did you consult with regional management at all about the  
11 buttons that Ms. London was wearing?

12 A The regional team member services team, is that who you're  
13 referencing?

14 Q Who -- I don't fully understand your leadership  
15 structure --

16 A Um-hum.

17 Q -- so anybody above you, yeah, yes.

18 A They would be on those emails, the name Heather Sillick  
19 (phonetic throughout) is on there, I believe Laura Stims  
20 (phonetic throughout) and I believe my team leader, James  
21 Mitchell, are all on those emails, and they would have been  
22 consulted in the email.

23 Q Did you have any conversations apart from the emails with  
24 any of those -- your leadership?

25 A Personally no, I did not, actually. That would have been

1 with Seth Carlson himself, and he's no longer with Whole Foods  
2 Market.

3 Q Ms. London brought up the possibility of wearing BLM  
4 earrings --

5 A Um-hum.

6 Q -- during one of those meetings, do you recall that?

7 A Yes, I do, it's in the notes I believe from the meeting.

8 Q Yeah. Do you know, and I believe Seth said he would need  
9 to reach out for the specifics, but he hadn't heard of -- he  
10 had never asked a TM to take off their jewelry unless it was a  
11 food safety issue?

12 A Yes, that's correct.

13 Q Do you know if -- do you know if he or you or anyone else  
14 reached out about her question about BLM earrings?

15 A I imagine that he would've, but I don't know specifically  
16 as it was never raised again as a subject on either side with  
17 me.

18 (Pause)

19 Q You understood -- you understood Ms. London's desire to  
20 stand up for her community as being the -- a broad community of  
21 African-American individuals? Is that fair to say?

22 A Yes, that is.

23 Q Did you view her wearing the George Floyd button as a form  
24 of protest against the mistreatment against black individuals?

25 A Yes, I did.

1 (Pause)

2 Q And were you aware that Seth had encouraged her to apply  
3 for the inclusion task force?

4 A Yes, that's correct.

5 Q And did you agree to having a constructive voice like hers  
6 as part of the conversation, in order to review reform and  
7 change, would be a positive thing?

8 MR. FERRELL: Objection. Relevance.

9 JUDGE SOTOLONGO: Sorry. I missed something. What?

10 MR. FERRELL: I -- I objected relevance. Counsel's  
11 question is about whether Ms. Smith thinks it would've been a  
12 positive to have Ms. London serve as a representative on the  
13 inclusion task force.

14 JUDGE SOTOLONGO: Yeah. I don't see -- I don't see the  
15 relevance in that. Sustained.

16 MR. PETERSON: Your Honor, may I share Respondent's 80  
17 with the witness?

18 JUDGE SOTOLONGO: Yes.

19 Q BY MR. PETERSON: This is the exhibit that Respondent's  
20 Counsel showed you, I believe this is the June 9th meeting that  
21 you reported as Seth's recap of the June 9th meeting. Is  
22 that -- is that correct?

23 A Can you scroll all the way up? Just --

24 Q All the way up?

25 A Yeah. Just to make sure it's the same -- yes, yup. Then

1     this is that document.

2     Q     Yeah, you see -- you see where Seth writes, as stated that  
3     I felt being white meant that I needed to listen first and that  
4     if she stated something I hadn't thought of, then I would need  
5     to sit with it and think. This was a final response to Yuri's  
6     statement that I had disrespected her by wearing the lanyard to  
7     begin with and having not viewed it as a form of protest. Do  
8     you agree with that sentiment?

9     A     Do I agree with what he is stating right there in that  
10    sentence?

11   Q     Yes.

12   A     Personally, I say -- I can say that he said this and he  
13   meant this. I don't know that I agree with it from a policy  
14   standpoint.

15   Q     You don't think that Whole Foods management or leadership  
16   should've listened to the concerns of Ms. London?

17   A     Do I think they should have listened to the concerns?  
18   Yes. And we did in several conversations.

19   Q     So what do you --

20   A     It was a misunderstanding. I'm sorry.

21   Q     Yeah, I guess, what do you disagree with about that  
22   statement?

23   A     The -- the final response that he had disrespected her by  
24   wearing the lanyard.

25   Q     Oh, that's fair.

1 A That was my disagreement, but.

2 Q It was Seth you agreed with?

3 A Yes, of course, that's why we have those conversations.

4 Q Okay. When -- August 18th, Ms. London was given several  
5 opportunities it sounds like to remove the Breonna Taylor  
6 button she was wearing.

7 A Yes.

8 Q But she ultimately refused, is that correct?

9 A Yes, that is correct.

10 Q And what -- the discipline that she received, the  
11 discipline, is that correct?

12 A She received a written counselling statement, yes.

13 Q Written counselling? Do those lead to higher forms of  
14 discipline?

15 A If they were to progress. So the easiest way to explain  
16 this is that the dress code is its own policy, so she would  
17 need to continually have dress code violations for it to  
18 escalate through the pathway, but it could, yes, ultimately.

19 JUDGE SOTOLONGO: So in other words, so I'm understanding  
20 it all, if for example or another Ms. London was late to work  
21 and she was written up for that -- the fact that she was  
22 written up for wearing the pin, there's no connection, is that  
23 correct?

24 THE WITNESS: That's correct.

25 JUDGE SOTOLONGO: (Indiscernible, simultaneous speech) no

1 effect on the other --

2 THE WITNESS: Yes.

3 JUDGE SOTOLONGO: Is that correct?

4 THE WITNESS: Yes.

5 JUDGE SOTOLONGO: Okay, I see. All right. All right.

6 MR. FERRELL: So just for -- if I'm -- sorry, Counsel,  
7 just for clarification, judge, just to make sure we're all  
8 clear, there is no allegation in this case related to any  
9 discipline issue for Ms. London?

10 MR. PETERSON: That is correct.

11 JUDGE SOTOLONGO: All right. So we're -- this whole area  
12 is a little -- now on the border of being irrelevant quite  
13 frankly, and so --

14 MR. PETERSON: Yeah, so I just -- I mean, I just have one  
15 followup question just so I understand.

16 Q BY MR. PETERSON: So Ms. London was permitted to continue  
17 to work while wearing the Breonna Taylor pin, but she did  
18 receive this counseling. Is that -- is that correct?

19 A To the best of my recollection, yes, that is correct.

20 MR. PETERSON: Nothing further, Your Honor.

21 JUDGE SOTOLONGO: All right.

22 Mr. Ferrell?

23 MR. FERRELL: No further questions, Your Honor.

24 JUDGE SOTOLONGO: Well, thank you, Ms. Smith. You're  
25 excused. Thank you for your testimony. Please do not discuss

1 your testimony with any other witness or potential witness in  
2 this matter until this whole thing is over. Thank you.

3 THE WITNESS: Thank you.

4 JUDGE SOTOLONGO: All right. Mr. Ferrell, any additional  
5 witnesses?

6 MR. FERRELL: No additional witnesses today, Your Honor.

7 JUDGE SOTOLONGO: Very well. Okay, I assume that wraps up  
8 the Indiana portion of the case.

9 MR. PETERSON: Yes, Your Honor.

10 JUDGE SOTOLONGO: All right. We can go off the record. I  
11 want to discuss some housekeeping matters. We can go off the  
12 record.

13 **(Whereupon, the hearing in the above-entitled matter was closed**  
14 **at 2:09 p.m.)**

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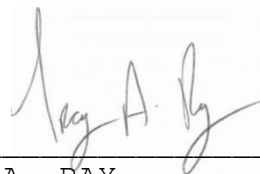
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C E R T I F I C A T I O N

This is to certify that the attached proceedings via Zoom Videoconference, before the National Labor Relations Board (NLRB), Region 20, Case Numbers 01-CA-263079, 01-CA-263108, 01-CA-264917, 01-CA-265183, 01-CA-266440, 01-CA-273840, 04-CA-262738, 04-CA-263142, 04-CA-264240, 04-CA-264841, 05-CA-264906, 05-CA-266403, 10-CA-264875, 19-CA-263263, 20-CA-264834, 25-CA-264904, 32-CA-263226, 32-CA-266442, Whole Foods Market Services, Inc. And Savannah Lynn Kinzer, Suverino Frith, Lyla Styles, Abdulai Barry, Kirby Burt, Kaeleb Candrill, Leea Mary Kelly, Truman Read, Haley Evans, Justine O'Neill, Jolina Christie, Sarita Wilson, Camille Tucker-Tolbert, Cassidy Visco, Yuri London, Ana Belen Del Rio Ramirez, And Christopher Michno, as Individuals, held at the National Labor Relations Board, Region 20, 901 Market Street, Suite 400, San Francisco, CA 94103, on July 26, 2022, at 9:03 a.m. was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.



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TROY A. RAY

Official Reporter

